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IN THE CIRCUIT COURT, 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2009 CA 040800XXXXMBAG

JEFFREY EPSTEIN,
Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually,
And L.M., individually,

Defendants.

* * * * *

HEARING BEFORE: HONORABLE DAVID F. CROW
DATE TAKEN: July 13, 2011
TIME: 10:34 a.m. to 4:45 p.m.
PLACE: Palm Beach County Courthouse
205 N. Dixie Highway, Room 9C
West Palm Beach, Florida 33401
REPORTED BY: Kathleen M. Ames, RPR

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A P P E A R A N C E S:

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APPEARING ON BEHALF OF DEFENDANT, EDWARDS

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MR. SCAROLA: Good morning, Your Honor.

MR. KNIGHT: Good morning, Your Honor.

THE COURT: Okay. We're here on Epstein versus Rothstein, et al. I want to thank the party that sent me the whole list of motions and I appreciate it very much. And I did have a chance to go through most of the stuff and, quite frankly, it's kind of hard to get my arms around this. There is a lot to do. My thoughts is to first kind of set-up a schedule to determine where we should go today in terms of starting in one place and where we're going to go. And seems to me the first place to start is try to get the pleadings in order, in terms of the motions that are pending that have not been ruled on. Then I would like to find out, I mean, I read the, at least, the interim report from Judge Carney. Is it Judge Carney? And I want to find out what the status of all of that is. And then I guess the best way to proceed, unless somebody has a better alternative, is to start with the motions in some type of chronological order. But before that, to kind of get an opening from both sides as to where they feel or why they feel these various issues should be decided in their favor. I know they are varied but just to give me some general background in terms of the case.

Having said that then, unless somebody has a better alternative, I would like to start with there is a pending

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motion to dismiss on the, I guess, it's the second amended complaint.

MR. ACKERMAN: It's the amended complaint, be the second complaint.

THE COURT: Which I've read in detail the motion. Also, I think, pending is still the motion for punitive damages in regard to the counterclaim and I don't think there is any other motions pending in regard to the pleadings, are there?

MR. SCAROLA: There are not, sir, no.

THE COURT: Okay. I mean, I think I'm here to talk about all of those so why don't we start with the motion to dismiss because that kind of gets the thing rolling so start there. It's your motion, Mr. Scarola.

MR. SCAROLA: Thank you, Your Honor. With the Court's permission, may I address the Court from a seated position today?

THE COURT: Yes, I prefer you do that.

MR. SCAROLA: Thank you. Your Honor, this case started out with a thirty page, seventy-nine paragraph, five count complaint that read more like a press release than a legal pleading. And was the source of substantial procedural difficulty, as a consequence of the imprecision with which an effort was made to embroil Bradley Edwards in the Rothstein Ponzi scheme. We have moved from that

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massive effuse press release to what is now a nine page, single count abuse of process case. The state civil remedy for criminal practices count gone. The state RICO claim gone. The fraud claim gone. The conspiracy claim gone. And a whole new abusive process claim has now been asserted very different from what we were looking at previously. Indeed, the only allegation that attempts to associate Bradley Edwards with anything having to do with Rothstein is a claim that appears in Paragraph 20, which says, essentially, because so many RRA personnel, Rothstein, Rosenfeldt, Adler personnel, were involved in the prosecutions of what were, obviously, very meritorious claims on behalf of the child victims of Mr. Epstein's criminal molestations, because so many RRA personnel were involved in the prosecution Edward, quote, "knew or reasonably should have known that his, Epstein's case files, were being shown and touted to investors."

Now, no allegation that he knew or reasonably should have known that they were part of a Ponzi scheme but on the non sequitur assertion that because there were a lot of people involved in these very important, very big cases. Mr. Edwards knew or reasonably should have known that someone was trying to attract investors to fund the prosecution of these claims.

The first element of a motion to dismiss relating to that

<p style="text-align: right;">Page 6</p> <p>1 allegation is so what. A law firm has every right to raise 2 funds to prosecute legitimate claims on behalf of its 3 clients. And if all Bradley Edwards knew, which he didn't, 4 but we must take the allegations of the complaint as true, 5 if all he knew was, because there were a lot of people 6 involved in the prosecution of these claims, he must have 7 known that his files were being shown to and touted to 8 investors, that, certainly, can't form the basis of any 9 cause of action.</p> <p>10 Let's take a look at what this complaint says Bradley 11 Edwards did that constituted abuse of process.</p> <p>12 THE COURT: Let me just say off the top here that 13 I have one problem with the complaint because it lumps 14 defendants together in numerous allegations without 15 differentiating as to any of the defendants which one did 16 what, if any, or all did.</p> <p>17 MR. SCAROLA: Your Honor has anticipated one of 18 the points that I would make and that, clearly, is one. 19 But even assuming that all the defendants did all of the 20 things that are claimed to have been done by the 21 defendants, plural, let's take a look at what they say 22 Bradley Edwards did. In the introductory paragraph they 23 say that he is liable for abuse of process because of four 24 things. One, he engaged in unreasonable and vexatious 25 discovery within the context of claims that are never</p>	<p style="text-align: right;">Page 8</p> <p>1 They don't make that claim.</p> <p>2 Paragraph 27 says the defendants embarked a scheme to 3 interfere with the non-prosecution agreement, quote, "for 4 the purpose of upping the stakes of the litigation." Now, 5 the non-prosecution agreement is the agreement that 6 Mr. Epstein entered into with the federal government that 7 allowed him, what we and our clients, or Mr. Edwards' 8 clients contend, was an improper and sweetheart deal. But 9 attempting to challenge unsuccessfully, at least thus far 10 unsuccessfully, a non-prosecution agreement on the basis 11 that the victims had a right under federal law to be 12 consulted regarding that agreement, which right was never 13 afforded to them. Attempting to challenge a 14 non-prosecution agreement could not possibly be abuse of 15 process.</p> <p>16 And to the extent that there might be some assertion 17 that this was tortious interference in an advantageous 18 business relationship, the law is very clear, and I'm 19 prepared to cite the cases to Your Honor, if it's 20 necessary. I don't know that this is going to be 21 challenged. That unsuccessful interference is not 22 actionable interference. A case calling Scheller versus 23 American Medical International. So the allegations about 24 the non-prosecution agreement, I suggest, are an absolute 25 nullity. They can't constitute an abuse of process.</p>
<p style="text-align: right;">Page 7</p> <p>1 asserted to have been anything other than legitimate 2 claims. So one is unreasonable and vexatious discovery in 3 the introductory paragraph not specified in any way.</p> <p>4 The second is making unfounded allegations in his 5 lawsuits on behalf of his clients who had legitimate 6 claims.</p> <p>7 The third is using improper investigative tools.</p> <p>8 And the fourth, interfering with a non-prosecution 9 agreement.</p> <p>10 Now, of those four generally described elements of 11 wrongful conduct, the only category that could possibly 12 involve process, which means the filing of a complaint, the 13 filing of an answer to a complaint, the filing of some 14 pleading or a subpoena. The only category that could 15 encompass abuse of process arguably could be engaging in 16 unreasonable and vexatious discovery. And we're going to 17 look at what they claim the unreasonable and vexatious 18 discovery was in just a moment.</p> <p>19 We know from Paragraph 17 that the claims were not 20 initiated while Mr. Edwards was an employee of RRA. 21 Paragraph 17 tells us that he brought these legitimate 22 cases, settled for very large sums of money voluntarily by 23 the plaintiff. He brought those claims with him to the law 24 firm. So it's not the filing of the claims themselves 25 that's anywhere alleged to have been an abuse of process.</p>	<p style="text-align: right;">Page 9</p> <p>1 Let's go on to Paragraph 29, because that's where 2 presumably an effort is made to set out what the 3 unreasonable and vexatious discovery is. Paragraph 29, 4 Sub-paragraph One talks about asking three airplane pilots 5 inflammatory questions during the course of the depositions 6 of those airplane pilots. Asking questions is not an abuse 7 of process. Asking airplane pilot questions cannot 8 possibly have a causal connection to the damage that is 9 alleged by Mr. Epstein in this case.</p> <p>10 Curiously the damages have also changed dramatically. 11 We are now told that the damages constitute fees and costs 12 incurred in the underlying litigation, any claim for which 13 was released in the underlying litigation. We will ask the 14 Court to take judicial notice of the orders of dismissal of 15 the three underlying claims, which require the parties to 16 those cases to bear their own attorney's fees and costs. 17 Mr. Epstein, having stipulated as part of the settlement 18 that he was going to bear his own fees and costs, cannot 19 claim as damages, in this case, fees and costs incurred in 20 the underlying litigation, if they could possibly form the 21 basis of any claim of liability in light of the broad 22 litigation privilege that exists in the state of Florida.</p> <p>23 Let me address that very briefly. If I may approach 24 the bench, I want to provide the Court with a copy of the 25 Florida Supreme Court decision in Echevarria,</p>

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<p>1 E-C-H-E-V-A-R-R-I-A, vs. Echevarria. That is the most 2 recent Florida Supreme Court decision addressing the 3 litigation privilege. It contains an excellent discussion 4 of the Court's view of the scope of that privilege. And 5 upon review of that case Your Honor will find that the 6 Supreme Court has clearly and unequivocally held that 7 conduct that occurs in the course of litigation is covered 8 by the absolute litigation privilege. The Court finds, as 9 a matter of public policy, that it would be inappropriate 10 to allow the assertion of independent claims for conduct 11 that occurs within the course and scope of litigation. 12 That there are other available remedies, including ethics 13 complaints against lawyers involved in such conduct, 14 including contempt proceedings and the imposition of 15 sanctions, which appropriately can control that conduct. 16 And allowing the assertion of claims in independent actions 17 for conduct that occurs in the course and scope of 18 litigation would have an inappropriate and improper 19 chilling effect.</p> <p>20 So in light of that broad privilege, anything and 21 everything that is asserted to have occurred in the context 22 of the underlying claims, such as asking three airplane 23 pilots inflammatory questions, first of all, does not 24 involve an abuse of process. And, secondly, is privileged 25 conduct.</p>	<p>1 conduct that is alleged to have occurred here in Paragraph 2 One, which isn't conduct involving process in any case. 3 Paragraph 29, Two, notifying Epstein of an intent to 4 depose his high-profile friends. Telling somebody I'm 5 going to depose your friends isn't process. Issuing a 6 subpoena is process. Serving the subpoena is process. 7 Notifying somebody that you're going to depose his friends, 8 that's not process. 9 Asking Epstein outrageous questions in his deposition, 10 Sub-paragraph number Three, that's not process. 11 Sub-paragraph Four, requesting records from the federal 12 government regarding communications between the government 13 and Epstein lawyers. This is where the tortious 14 interference with the non-prosecution agreement is alleged 15 to have occurred because requests are made to find out 16 about communications between Epstein and the federal 17 government with regard to the very criminal activity that 18 forms the basis of the civil lawsuits that Mr. Edwards is 19 legitimately prosecuting on behalf of the child victims of 20 Mr. Epstein's criminal activity, clearly, could not 21 constitute abuse of process. 22 Paragraph Five, quite frankly, I just don't 23 understand. 24 Paragraph 29, Five, reads the representative of the 25 trustee for RRA's bankruptcy stated that there are</p>
<p>Page 11</p> <p>1 Next paragraph, Sub-paragraph Two of Paragraph 29. 2 Notifying Epstein of an intent to depose his high-profile 3 friends. 4 THE COURT: Let me just ask you, I've not read, 5 quite frankly, the Echevarria case but does it still stand 6 for the proposition that for there to be a litigation 7 privilege it must be related to the legal proceeding 8 itself? 9 MR. SCAROLA: Yes, sir. 10 THE COURT: It can't be something like -- okay. 11 MR. SCAROLA: If I were to issue a subpoena to 12 Mr. Edwards for the sole purpose of causing him to miss an 13 important business appointment where he was going to make a 14 lot of money and I'm requiring him to be in Court with no 15 legitimate connection whatsoever to the litigation that's 16 involved, that could constitute an abuse of process. One 17 of the elements clearly is that it must be related to the 18 litigation. But any conduct that occurs in relation to the 19 litigation is conduct that is protected by an absolute 20 privilege. 21 There is a discussion of the Levin, Middlebrooks case 22 where the Supreme Court makes clear that we're not just 23 talking about statements made in the context of litigation 24 but all tortious conduct that may be alleged. So it's a 25 very broad privilege. It covers exactly the kind of</p>	<p>Page 13</p> <p>1 thousands of documents involving RRA's employees and 2 government officials, including state and federal law 3 enforcement authorities relating to Epstein. What does 4 that mean in the context of this abuse of conduct claim 5 against Bradley Edwards? It just doesn't make any sense. 6 I can't respond to it because I clearly don't understand 7 it. 8 Six is requesting records from Dr. Bard who it is 9 claimed didn't treat Mr. Epstein. Well, okay, so what. I 10 guess one way to find out whether he treated Mr. Epstein is 11 to subpoena any records that he has about Mr. Epstein. 12 Subpoenaing records from a physician is not an abuse of 13 process outside the scope of the litigation privilege. 14 Paragraph Seven, filing a second amended complaint 15 alleging Epstein forced L.M. to engage in oral sex. Part 16 of the litigation privilege clearly. 17 Attempting to depose celebrity airplane passengers. 18 Clearly, within the course and scope of the litigation 19 privilege in the absence of any allegation that this was 20 entirely unrelated to the prosecution of the claims against 21 Mr. Epstein, which allegation appears nowhere. No such 22 allegation appears anywhere. 23 Nine, directing third-party subpoenas be used to 24 obtain Epstein's prescriptions from pharmacies. 25 Now, it doesn't say that the third-party subpoenas are ever</p>

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<p>1 issued but if we can infer that they were, this is conduct 2 that clearly falls within the scope of the litigation 3 privilege.</p>	<p>1 Edwards and continue to assert his Fifth Amendment right as 2 to matters that are relevant and material to the claims 3 that he is attempting to prosecute. For, for all of those</p>
<p>4 Paragraph 30 says that the defendants trespassed on 5 Epstein's property and conducted surveillance of him. Now, 6 without getting into the truthfulness of those allegations 7 which must be taken as true, if the defendants trespassed 8 on Mr. Epstein's property, then there may be a cause of 9 action for trespass. There is no cause of action for abuse 10 of process because somebody trespasses on your property. 11 There is no cause of action for abuse of process because 12 somebody decides that they are going to surveil you.</p>	<p>4 reasons, and if the applicability of the sword/shield 5 doctrine is in any way challenged, I'll address that in my 6 response. I don't know how it can be. But for all of 7 these reasons this is a complaint, an amended complaint 8 which can, should and finally must be released. It must be 9 dismissed. Thank you, Your Honor.</p>
<p>13 Paragraph 31 says that Mr. Edwards tried to plead a 14 RICCO claim. So what.</p>	<p>10 THE COURT: Just one second. Let me read 11 something here.</p>
<p>15 And Paragraph 32 says that he tried to freeze 16 Mr. Epstein's assets. So what. That does not constitute 17 abuse of process and to the extent it might be 18 characterized as a use of process in the context of the 19 litigation on behalf of his child victims of Mr. Epstein's 20 repeated extensive criminal activity, it is covered by the 21 litigation privilege.</p>	<p>12 MR. SCAROLA: The motion to dismiss reaches those 13 arguments through the incorporation of all of the arguments 14 in the summary judgment.</p>
<p>22 There are three elements of damage that are alleged. 23 Fees and costs in the underlying litigation, which cannot 24 constitute damages in this case. And the installation of 25 an enhanced security system, which presumably may have some</p>	<p>15 THE COURT: You must be some kind of psychic. 16 MR. SCAROLA: I anticipated that is where the 17 Court was going. The motion to dismiss, Your Honor, 18 expressly incorporates the arguments that were made during 19 the summary judgment hearing. And, clearly, one of the 20 principal arguments that was made in the summary judgment 21 hearing was an argument with regard to the sword/shield 22 doctrine. I apologize for having intruded upon your 23 thoughts. 24 THE COURT: Go ahead. 25 MR. KNIGHT: Your Honor, Christopher Knight on</p>
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<p>1 causal connection to the trespass on Epstein's property and 2 the conducted surveillance of him, but, certainly, has 3 nothing to do with any abuse of process. And the retention 4 of security personnel for Mr. Epstein's personal safety and 5 to protect his property. Now, there is no possible causal 6 connection between the alleged and privileged litigation 7 misconduct and Mr. Epstein's desire for privacy.</p>	<p>1 behalf of Jeffrey Epstein. And let me back you up as to 2 where we are and why we are. When we came into this 3 lawsuit there was the original complaint, which Mr. Scarola 4 talked about and Your Honor was allowing us to move forward 5 with discovery before we amended the complaint, which from 6 day one we said we will be amending the complaint to plead 7 the cause of action that we felt was appropriate. We tried 8 to go down that angle but plaintiffs -- I mean, excuse me, 9 the defendants asserted privilege to pretty much each and 10 every document which we will ever be able to get our hands 11 on. We did get some limited privilege logs, which will 12 come up in part of my argument, which is talks about why 13 the frivolity of this motion to dismiss. If they want to 14 move for a motion for summary judgment on down the line if 15 they have the facts after we get the document, that's a 16 horse of a different color.</p>
<p>8 Another significant problem that this complaint faces 9 is that Mr. Epstein seeks to assert these claims by way of 10 an amended complaint when he has repeatedly and 11 persistently refused to provide any relevant or material 12 discovery as a consequence of the assertion of his Fifth 13 Amendment privilege. We have previously cited to Your 14 Honor a number of cases, a substantial body of case law 15 relating to the sword/shield doctrine. Mr. Epstein is 16 seeking affirmative relief. I don't challenge the validity 17 of his assertion of Fifth Amendment privilege. There is no 18 doubt in my mind that he faces the potential of additional 19 criminal prosecution. There are new claims that 20 Mr. Edwards himself has placed the defendants on notice 21 that he is about to file so there is no doubt about the 22 fact that Mr. Epstein faces additional potential criminal 23 liability and has a right to assert his Fifth Amendment 24 privilege against self-incrimination. But the case law is 25 absolutely clear he cannot come to this Court, sue Bradley</p>	<p>17 But you asked us to -- first, let's take the 18 discovery. Unfortunately between Mr. Rothstein not being 19 able to be deposed, which we, of course, need to talk to 20 Mr. Rothstein about what Mr. Edwards' involvement was, and 21 their blanket assertion of privilege -- 22 THE COURT: Let me back up. I don't -- I 23 directed you to do discovery. I think I questioned why 24 there was never a motion to dismiss to the original 25 complaint and I said but this is the complaint we have to</p>

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<p>1 deal with. And I can't tell from reading this thing what 2 in the world the cause of action is and it created a lot of 3 problems in terms of what the scope of discovery was. 4 Without knowing what you are suing for it's very difficult 5 to figure out the scope of discovery and that's why I 6 directed Mr. Ackerman to file an amended complaint so we 7 would be able to focus in on what is discoverable, what 8 isn't, what the cause of action is and that sort of thing.</p> <p>9 MR. KNIGHT: Correct. And then we went forward 10 with what we had to date, which is a reasonable basis for 11 abuse of process claim which has been made. The complaint 12 on its four corners meets all the standards which are 13 required. And these are the cases that are already cited 14 in our briefing and the response, is the Donna Della case, 15 which is the 4th DCA case out of 1987, and goes through the 16 various factors, which leads to what I must give you, which 17 is a little bit of background so that you have it.</p> <p>18 Mr. Epstein came over to the Rothstein firm with three 19 cases. Excuse me. Mr. Edwards. Mr. Edwards came over to 20 the Rothstein firm with three of these files. After he got 21 to the Rothstein firm Mr. Rothstein, Mr. Edwards, and 22 others used the cases to pump up the Ponzi scheme. The 23 documents that we need and the privilege logs --</p> <p>24 MR. SCAROLA: Excuse me, Your Honor, I'm sorry. 25 THE COURT: That's not even alleged.</p>	<p>1 the complaint. And if there are, in fact, special damages, 2 I think they have to be pled, as compared to general 3 damages. So I don't know whether you're asking for and it 4 makes a big difference, ultimately, what, what -- if we get 5 to the point of the discovery issue -- what the defendants 6 can get from the plaintiff and vice-versa. I mean, if 7 you're claiming damage to reputation, lost profit, I don't 8 know what it is you're claiming. I don't know what 9 including but not limited to means, quite frankly.</p> <p>10 MR. KNIGHT: Your Honor, let me break these down. 11 THE COURT: Okay. 12 MR. KNIGHT: You brought up the subject early on 13 about lumping the defendants together and there was an 14 early paragraph which did so. The Paragraph 29, which Mr. 15 Scarola went through, is going through allegations relative 16 to Mr. Edwards and if it needs to be divided out relative 17 to Rothstein and Edwards, we will do so as it relates to 18 damages. The law under abusive process is even nominal 19 damages are enough to survive for a cause of --</p> <p>20 THE COURT: Don't misunderstand, Counsel, I don't 21 disagree with that proposition that you allege damages that 22 you claim are a result of this. What I'm concerned about 23 is you have thrown in the kitchen sink in that, which is 24 included not limited, does that mean you're claiming other 25 damages or not claiming other damages? I don't know what</p>
<p>Page 19</p> <p>1 MR. SCAROLA: It is not alleged. And I cannot 2 allow counsel to make these kinds of statements in open 3 court in the presence of the press and leave them 4 unchallenged. That's exactly what has repeatedly gone on 5 in this case to besmirch Mr. Edwards' reputation.</p> <p>6 THE COURT: Let me stop you. What I'm concerned 7 about with this complaint, okay, and what concerns me is 8 that there are allegations that the defendants did this, 9 the defendants did this without specifying who did what to 10 whom and why. It seems to me if you are going to sue 11 Mr. Edwards or anyone else, for that matter, you need to be 12 specific as to what he did or what you accuse him of before 13 I -- I dismiss routinely complaints like this, which 14 generically say the defendant did something without 15 specifying who did what to whom and why. Because it does 16 not spell out what your claims are I don't know what 17 Mr. Rothstein did. What Mr. Edwards did. Or -- and you 18 also say and others. Who? I don't know who they are.</p> <p>19 And the other problem I have with it, aside from, I 20 think there are some other issues, but your prayer for 21 damages is specific as to some things but also has that, 22 that, that, phrase that, that we all, you know, perk up our 23 ears on, including but not limited to, which leads me to 24 believe there is something else there that you're claiming 25 in terms of damages, which is not, in fact, spelled out in</p>	<p>Page 21</p> <p>1 that means.</p> <p>2 MR. KNIGHT: At this time we're claiming the 3 three areas of specified damages which we went into but the 4 reason that catch-all is in there it goes back to this 5 whole issue relative to the documents that we have been 6 unable to receive. We believe that there will be other 7 damages that maybe would be asserted at that time. If Your 8 Honor is saying what he would rather have us do is once we 9 get the documents, amend again, I fully understand. We can 10 do so. But at the same time we don't want to be precluded 11 from being able to move forward with our cause of action.</p> <p>12 The abuse of process cause of action is spelled out in 13 all four corners under the Della Donna decision and, also, 14 the SCI Funeral comments relevant to it, which have been 15 provided in the earlier briefings. Here at the motion to 16 dismiss stage that is where we, that's what the Court needs 17 to look at, as we have discussed. The areas relative to 18 litigation privilege, which Mr. Scarola went at length 19 into, deals with tortious interference causes of action and 20 do not deal with abuse of process. It would be nonsensical 21 for abuse of process to have a privilege because, 22 therefore, you will never be able to bring a cause of 23 action for abuse of process.</p> <p>24 THE COURT: Let me disagree with you. I think 25 that the litigation privilege would go to any process</p>

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<p>1 served in the litigation that's relevant to the litigation. 2 It doesn't give you the right to go out and subpoena the 3 president of the United States in a case just to get, for 4 some reason, unrelated to the purposes of the litigation. 5 So, I mean, there is, I read these cases. Unless this has 6 changed the law. At least, it allows abuse of process in 7 civil litigation if, in fact, the processes are not for a 8 legitimate purpose.</p> <p>9 MR. KNIGHT: If the unrelated areas are --</p> <p>10 THE COURT: His point was how can these be 11 illegitimate, I think is what his point was.</p> <p>12 MR. KNIGHT: If that's his point but what I was 13 taking he was using the cases of tortious interference.</p> <p>14 THE COURT: I don't think it matters what 15 tort it is. I think the litigation privilege applies 16 whether it's libel, slander, tortious interference, you 17 know, abuse of process, malicious prosecution, all of those 18 there is a litigation privilege associated with that. And 19 it's a natural privilege. That's how I understand the law. 20 I may be misquoting it but that's what I understood the law 21 is.</p> <p>22 MR. KNIGHT: Understood. And the allegations 23 which are in Paragraph 29 go into some of those areas which 24 are outside, including Mr. Edwards' own deposition. I 25 mean, in his lawsuit, his clients were never on these</p>	<p>1 that is abuse of process. This is at the point of 2 allegations without us being able to get discovery. The 3 allegations we have put into Paragraph 29 in specificity, 4 especially, when you get into Paragraph Four under, under 5 29, which deals with Mr. Edwards going to the Court 6 relative to what should be something relating to the three 7 lawsuits that he has, when what it really is undermine the 8 non-prosecution agreement. Why is that relevant to abuse 9 of process? Well, all that is being used for is to find a 10 way to ramp up our client relative to other worries, which 11 are unrelated to the prosecution of those individual victim 12 cases so that he ends up having to be in a situation where 13 he has to pay exorbitant dollars, which otherwise would 14 multiply what the amount of the actual value of those 15 underlying cases otherwise would be. The complaint itself 16 goes through all that is required under Della Donna.</p> <p>17 THE COURT: I presume in those underlying cases 18 there were claims of punitive damages; is that correct.</p> <p>19 MR. KNIGHT: There are claims of punitive 20 damages, correct.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. KNIGHT: By the same thing, even looking into 23 that, the efforts to freeze assets, things like that. 24 There was no indication at any point that Mr. Epstein would 25 be unable to cover whatever the compensatory damages and,</p>
<p>Page 23</p> <p>1 airplanes yet they went forward and took the depositions of 2 these pilots, et cetera, on the airplane causing excess 3 fees. And really what this was being used for is to be 4 able to gain information which could be used in the 5 underlying promotion in the Rothstein cases. And that's 6 why I brought it up earlier when I was interrupted by Mr. 7 Scarola. It is relevant to what we're talking about today. 8 This is a matter where Mr. Edwards' deposition said I had 9 very little contact with Mr. Rothstein. But at the same 10 time we learn once we get to the privilege log and also the 11 only time he dealt with Mr. Jenny was when Mr. Jenny, who 12 is the investigator approached him, that they are claiming 13 privilege related to, we counted it up, dealing with 14 eighteen to twenty attorneys, nine paralegals, plus 15 investigators.</p> <p>16 MR. SCAROLA: Excuse me, Your Honor, I thought 17 we were arguing the motion to dismiss and not the privilege 18 issue.</p> <p>19 MR. ACKERMAN: I am. But Your Honor's specific 20 question -- I would ask Mr. Scarola to hold his 21 arguments -- but Your Honor's specific question dealt with 22 what are these areas which are outside of the tort or 23 whatever is being sued on. And if those are being done for 24 some purpose other than the underlying litigation, which 25 were the L.M. and the Jane Doe and E.M. cases here, then</p>	<p>Page 25</p> <p>1 if punitive damages were ever to be allowed, any type of 2 punitive award. All of this was done to ramp up these 3 cases outside of these three, which were the ones that 4 Mr. Rothstein, and as we get through discovery, we believe 5 Mr. Edwards were using to sell to the various investors to 6 ramp up the Ponzi scheme. They are tied together. They 7 are in the same firm. These are the lawsuits that were 8 used when the various investors came into the office with 9 Mr. Rothstein. Mr. Edwards is claiming, I believe, that I 10 had no idea that this was going on with my lawsuits. 11 Although, we know in the privilege log they're claiming 12 that he's dealing with the eighteen to twenty attorneys, 13 the nine paralegals and the investigators. They just don't 14 add up both ways.</p> <p>15 But relative to what we're here on today, the motion 16 to dismiss, this amended complaint does plead a cause of 17 action under Florida law. If Your Honor wants us to go 18 back and plead with more specificity relative to where we 19 put in defendants, we will do so. I would suggest it would 20 be better for us to be able to get the discovery. And the 21 reason we have so many people here is we have 22 Mr. Weinberg here to represent -- to talk about privilege 23 issues. Mr. Ackerman to talk about various issues that may 24 come up, including sword and shield. Get to those so that 25 we don't constantly have to be coming back to the Court.</p>

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<p>1 This complaint does plead a cause of action under Florida 2 law and the motion to dismiss should be denied. Thank you.</p> <p>3 THE COURT: Speak to the fact that some of these 4 things I, I mean, I understand how, even though they ask 5 you, the question in and of itself may not be abuse of 6 process. The actual subpoenaing somebody and then asking 7 of the questions may be abuse of process, at least, in my 8 view. If, in fact, the only purpose of doing that is to, 9 like you have alleged here, to somehow or another for 10 illegal purposes or for improper purposes. But there are 11 some of these things that you've alleged here I don't know 12 how ever could be abuse of process. Like notifying 13 somebody that they intend to do something, how could that 14 possibly be abuse of process? Or saying -- or how can 15 investigation be an abuse of process, or surveillance be an 16 abuse of process. That's not using the process of the 17 Court for anything. Maybe I'm missing something.</p> <p>18 Or what does this mean, the representative of the 19 trustee for RRA's bankruptcy stated there are thousands of 20 documents involving RRA employees and government officials 21 including state and federal law enforcement authorities 22 relating to Epstein. What does that have to do with abuse 23 of process?</p> <p>24 MR. KNIGHT: That one --</p> <p>25 THE COURT: Let me finish and then you can</p>	<p>1 individual paragraphs would not survive or individual 2 sub-part As or Bs, you may be correct. But I think the 3 Court needs that in the amended complaint to get the 4 overall flavor of what the abuse of process cause of action 5 is.</p> <p>6 THE COURT: That may be. But what you've, you've 7 alleged these as specific acts of abuse, though. You don't 8 allege this as some kind of background or context or 9 something like that.</p> <p>10 MR. KNIGHT: And we did -- we allege it but I 11 understand Your Honor's point saying how is that connected 12 to the process because they did go forward and actually --</p> <p>13 THE COURT: It says --</p> <p>14 MR. KNIGHT: -- they didn't serve the celebrities 15 they just threatened to serve the celebrities.</p> <p>16 THE COURT: I'm just reading what you said. This 17 is not my words. It says the defendants made illegal, 18 improper and perverted use of the process by utilizing 19 unreasonable discoveries, unnecessary discovery, or 20 threatening to take discovery and then you list. And some 21 of these it seems to me are not actionable as a matter of 22 law, the way you've pled it anyway. I mean, maybe --</p> <p>23 MR. KNIGHT: I think Your Honor's point is that 24 it should have been more to the general allegations of the 25 preamble rather than the specifics.</p>
<p>Page 27</p> <p>1 respond.</p> <p>2 MR. KNIGHT: Yes, sir.</p> <p>3 THE COURT: Why is making an allegation in a -- 4 well, I guess that could -- I can see that. Attempting to 5 discover information. You know, it's like -- what I'm 6 getting at do you have any case law that says abuse of 7 process can be not actually issuing process but thinking 8 about it or threatening it or something like that?</p> <p>9 MR. KNIGHT: The Della Donna case doesn't go into 10 investigation. The privilege issue really comes up as an 11 affirmative defense, Your Honor, and that's what the cases 12 say also.</p> <p>13 THE COURT: I'm not talking about privilege.</p> <p>14 MR. KNIGHT: As it relates to these allegations, 15 though, if some of them can be taken apart to say, well, 16 this one could be connected back to the process, i.e. the 17 pilots being deposed, et cetera, and the other one is more 18 flavor for the complaint. But to be able to spell out this 19 complaint so the Court can understand where we're 20 eventually going, because we haven't had these documents, I 21 think putting that into the pleadings is the correct thing 22 to do so that the Court can understand the complexity of 23 this and what's involved and why we need to find out more 24 so that we can get into the specifics. Clearly, we have 25 enough for abuse of process. Whether or not some of these</p>	<p>Page 29</p> <p>1 THE COURT: I'm also concerned about the fact 2 that you've lumped all the defendants together in one -- 3 two defendants, I guess, together without specifying which 4 did which. And I understand it's kind of a chicken before 5 the egg, egg before the chicken.</p> <p>6 MR. KNIGHT: Chicken or egg or cart before the 7 horse, Your Honor, it's all the same thing. When we look 8 at these privilege logs we see the involvement of so many 9 people and the Court rightfully said let's try to amend the 10 complaint. Now, we did the best we can with the facts we 11 have but they are still playing this we're not going to 12 give you anything defense, which puts us, you know, in a 13 position where certainly they should not be able to take 14 that as an advantageous position and now say, oh, let's go 15 ahead and dismiss this complaint and we'll still hide all 16 of these documents from you we haven't given. Certainly, 17 these documents, many of them are waived. Many of them are 18 privileged on their face, et cetera. We want to know the 19 who, the how, the when. And then there could be additional 20 abuse of process allegations in there with more specificity 21 but at it relates to this complaint itself, it has enough 22 of the four corners to survive the motion to dismiss.</p> <p>23 THE COURT: Anything further?</p> <p>24 MR. SCAROLA: Yes, sir, Your Honor. What we have 25 heard is, indeed, a cart before the horse argument. We</p>

<p style="text-align: right;">Page 30</p> <p>1 filed this defective complaint because we haven't gotten 2 the discovery that will enable us to file an appropriate 3 complaint. You need to have the basis to sue first. And 4 you need to state a viable cause of action first. You 5 don't excuse obvious defects in your pleading on the basis 6 that you haven't yet gotten the discovery that you hope is 7 going to provide a basis for some cause of action and I 8 don't know what it is. What Echevarria says is, quote, in 9 the Levin case the 11th Circuit certified a question to 10 this Court asking whether Florida's litigation privilege 11 protects the acts of certifying to a trial Court an intent 12 to call opposing counsel as a witness at trial in order to 13 obtain counsel's disqualification. And later failing to 14 subpoena and call that person as a witness from a claim of 15 tortious interference with a business relationship. 16 Answering in the affirmative we extended the litigation 17 privilege to all torts finding that absolute immunity must 18 be afforded to any act occurring during the course of the 19 judicial proceeding, regardless of whether the act involves 20 a defamatory statement or other tortious behavior. And 21 here's the qualifications that Your Honor referenced 22 earlier. So long as the act has some relation to the 23 proceeding. 24 There is no allegation anywhere in this amended 25 complaint that any of these acts had no relation to the</p>	<p style="text-align: right;">Page 32</p> <p>1 weren't out there putting all of this pressure on him. 2 Well, that's, that's Mr. Edwards' job to maximize the value 3 of his client's claims by putting as much legitimate 4 pressure on the defendant as he possibly could and he, 5 obviously, did an extremely effective job. 6 So this complaint clearly needs to be dismissed on all 7 of those grounds that we have asserted. And one thing that 8 is not addressed at all in the argument that we just heard 9 is the sword/shield problem that they have. Now, this is 10 an amended complaint so we know the sword/shield issue 11 exists because we've already deposed the defendant. Excuse 12 me. We've already deposed the plaintiff. 13 THE COURT: Let me tell you, Mr. Scarola, I'm not 14 going to dismiss the complaint based upon that at this 15 stage. The reason, very simply, is that we can't really 16 know what the sword/shield doctrine applies to until I know 17 what the lawsuit is about. And I don't know what the 18 lawsuit is clearly about at this point because there's 19 certain things, obviously, that he can object to and I'm 20 not making that determination at this point in time. 21 I am going to dismiss the complaint with leave to 22 amend, however. I find some serious problems with the 23 complaint. Specifically, number one, that you have lumped 24 together the defendants and it's not, it's not, in my view 25 not a, not a basis to make vague allegations that are</p>
<p style="text-align: right;">Page 31</p> <p>1 pending claims against Mr. Epstein, which most clearly 2 included claims for punitive damages. 3 And the fact that airplane pilots are not asked a 4 single question about the particular victim in the cases 5 being prosecuted doesn't mean that what was going on on 6 those airplanes on a routine basis that formed part of a 7 pattern of criminal activity on Mr. Epstein's part was not 8 relevant and material to the punitive damage claims that 9 were being investigated and prosecuted legitimately by 10 Mr. Edwards. The fact that he took an aggressive, thorough 11 approach on behalf of his clients. And took discovery 12 reasonably calculated to lead to admissible evidence. And 13 there is no allegation that any of this discovery was not 14 reasonably calculated to lead to admissible evidence, those 15 allegations do not appear without specifically alleging the 16 exception recognized by the Florida Supreme Court, this 17 complaint fails. And it is no excuse to say, maybe I'm 18 going to find some evidence somewhere that allows me to 19 assert some legitimate cause of action, if you allow me to 20 proceed with discovery on a case -- on a pleading that does 21 not state a legitimate cause of action. 22 We start hearing again about the theory of damage that 23 no longer appears in this complaint. That is Mr. Epstein 24 had to pay more to settle these cases than he otherwise 25 would have had to pay to settle these cases if Mr. Edwards</p>	<p style="text-align: right;">Page 33</p> <p>1 nonspecific to a particular defendant because you haven't 2 gotten some privileged documents yet. 3 Because you got to come out, if you think this 4 gentleman, or anybody, has made, committed a tort, then you 5 have to allege it and then you get to the discovery that 6 you want. The abuses of process, if they occurred in this 7 case, occurred. They're not privilege. They occurred as 8 part of the lawsuit. 9 Now, Mr. Edwards' involvement or lack of involvement 10 in some alleged Ponzi -- not alleged Ponzi scheme, I guess 11 it's a fact it's a Ponzi scheme by Mr. Rothstein, that 12 may be subject to all of these privilege objections and 13 how -- whether he was involved or not involved and what he 14 did or didn't know and all of that kind of stuff. But the 15 process was in the lawsuits. You have to know at this 16 point in time what he did or didn't do that was an abuse of 17 process. I don't know how you can't know at this point in 18 time because it either, it was either calculated to do 19 something with that litigation or it was abuse for that 20 litigation. 21 MR. KNIGHT: Your Honor, we will re-allege with 22 more specificity. Thank you. 23 THE COURT: How much time do you need? And it's 24 been a problem with this case from day one, okay. And I 25 know I've mentioned it several times before without</p>

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<p>1 getting, knowing what it is that we're litigating, it's 2 very difficult to make decisions on all of these other 3 issues you guys are talking about, including sword and 4 shield, including privilege, including whether or not, you 5 know, Mr. Edwards has to answer questions or Mr. Epstein 6 has to answer questions, unless we know exactly what, 7 number one, the claims are against -- what the abuses are. 8 And let me back up. Some of these things the way you've 9 alleged them, at least in my view, are not abuse of process 10 as a matter of law. The mere threatening of doing 11 something without doing it, I don't -- unless you get a 12 case that says that's abuse of process, I don't see how it 13 is.</p> <p>14 The others, I think, could be if they're alleged 15 properly. If you're taking a deposition and asking 16 questions in that deposition for the sole purpose of what 17 you have alleged here or for the purpose unrelated to 18 actually prosecuting the litigation, then I think that can 19 be abuse of process.</p> <p>20 But the mere notifying somebody, I have trouble 21 understanding how Paragraph Five is an abuse of process. I 22 have trouble understanding attempting to conduct discovery. 23 Or, I mean, some of these I just don't see how actionable. 24 So I think you need to, to plead it more specifically. 25 And, also, I think you need to specify. The included</p>	<p>1 punitive damages on the counterclaim, is that? 2 MR. SCAROLA: Yes, sir. 3 THE COURT: Let me, I don't want to take your 4 time, Mr. Scarola, and let me tell you what I'm going to do 5 on that. I'm going to deny the motion. I already heard an 6 argument on it. I already read some of the materials. And 7 here's the reason I'm denying the motion at this point, and 8 it's without prejudice. The rule, and I think it's 9 Rule 1.190. Is that it? Was -- yeah. 1.190, which is the 10 rule on amended and supplemental pleadings, was amended in 11 two thousand, I believe, 2003 pursuant to Florida Statute 12 768.72 to give guidance as to how you go about doing this. 13 And the footnotes to the Civil Rules of Procedure -- and 14 this is a problem we had before this rule came out -- cites 15 to, it says that subsection is amended to comply with the 16 case of Beverly, Beverly Health And Rehabilitation 17 Services, Inc. versus Meeks. And I had been applying this 18 case before they actually incorporated it into the rules, 19 but that case specifically said, it set up a procedure, at 20 least, in the Third District for motions for punitive 21 damages. And I'll quote from paragraph -- I don't know 22 what page it is here. But, basically, says this -- and 23 I've been applying this in the past, as well. Accordingly, 24 it is and shall be the practice of this Court to require a 25 written summary of the evidentiary proffer with appropriate</p>
<p>Page 35</p> <p>1 but not limited to damages doesn't cut it. If you get 2 special damages, I think you have to plead them. Now, you 3 can always amend, if you find out there are other damages 4 down the line that you have not claimed.</p> <p>5 But see, one of the issues in this case is going to be 6 what your damage claims are may have something to do with 7 what discovery is or is not calculated to lead to 8 admissible evidence in this case.</p> <p>9 So I'm granting the motion with leave to amend. How 10 much time do you need?</p> <p>11 MR. KNIGHT: Thirty days, Your Honor.</p> <p>12 MR. SCAROLA: We would object to thirty days, 13 Your Honor. This case has been going on for a very long 14 time. This is now a single count complaint. Ten days 15 ought to be more than adequate to get this filed.</p> <p>16 THE COURT: Well, I'm going to go ahead and give 17 you thirty days to amend. Okay. The next issue, I guess, 18 on the --</p> <p>19 MR. ACKERMAN: Your Honor, I've got some blank 20 orders on all of the motions. Do you want --</p> <p>21 THE COURT: Well, I'm going to ask you guys to 22 fill them out for me. It would make it easier for me. 23 Okay.</p> <p>24 MR. ACKERMAN: Okay.</p> <p>25 THE COURT: The next one is the motion for</p>	<p>Page 37</p> <p>1 page and line citations, deposition testimony, affidavits 2 need to be filed and served in advance of the hearing so 3 the defendant will have a reasonable opportunity. The 4 motion doesn't do that.</p> <p>5 MR. SCAROLA: It does, sir, respectfully.</p> <p>6 THE COURT: I pulled it. The one sitting here 7 doesn't have it.</p> <p>8 MR. SCAROLA: May I call the Court's attention 9 to the very first paragraph of the motion that says the 10 counter-plaintiff, Bradley J. Edwards, moves this honorable 11 Court for an entry of order granting him leave to assert a 12 claim for punitive damages against the counter-defendant, 13 Jeffrey Epstein. And in support thereof would show that 14 the record evidence presented to the Court in support of 15 Edwards' motion for summary judgment satisfies every 16 statutory prerequisite for the assertion of a claim for 17 punitive damages. That summary judgment motion, if Your 18 Honor recalls, includes an extremely detailed recitation of 19 record evidence and, specifically, cites to page and line 20 numbers in supporting depositions, to specific paragraphs 21 in supporting affidavits, and, clearly, by virtue of what 22 is presented to the Court and incorporated by reference 23 every conceivable requisite for a proffer is included in 24 that incorporated summary judgment motion.</p> <p>25 Now, if what Your Honor wants us to do is to give you</p>

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1 that summary judgment motion back again and change the
 2 title on the summary judgment motion to say now it's a
 3 proffer.

4 THE COURT: I want you to make a motion pursuant
 5 to what I have just said. I don't want any incorporated
 6 things, you know. The same thing with your motion to
 7 dismiss. You know, when you incorporate something else
 8 that doesn't work for me. I need it in front of me. I
 9 need the page, line so I can read it as a motion.

10 MR. SCAROLA: Do you really want that box of
 11 material back again?

12 THE COURT: I got the box. I saved the box. I
 13 knew this was coming. I got the box. I need your motion.
 14 I need it to be specific because your summary judgment
 15 motion dealt with a lot of other stuff, too, not just with
 16 the evidence for punitive damages. Okay. And the other
 17 thing was that on the summary judgment motion, if I recall
 18 right, one of the reasons I denied the motion was discovery
 19 not being completed at this point, if I recall.

20 MR. SCAROLA: I think that was the only reason
 21 that Your Honor denied the summary judgment motion, which,
 22 obviously, would not be any legitimate opposition to a
 23 motion to assert a claim for punitive damages.

24 THE COURT: Again, Mr. Scarola, we're going to do
 25 it my way.

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1 MR. SCAROLA: I understand.

2 THE COURT: I want you to file your motion, set
 3 it for hearing and I'll look at it. And then it goes on to
 4 say that what happens is the other side, okay, this has to
 5 be done, at least thirty days, at least, this rule says
 6 thirty days before the motion, before the motion is set for
 7 hearing. To give the opportunity for the defendants to
 8 file something specifically in opposition, page and line
 9 and that way I can compare and contrast. That's the way I
 10 like to do it. And it makes -- it's easy when you have an
 11 alcohol related case or something like that. It's very
 12 complex in these cases and, you know, I just do not have
 13 the ability to go back and do it. So I want you to do
 14 that.

15 MR. SCAROLA: I understand the Court's direction.

16 THE COURT: So that's without prejudice and file
 17 your motion. Okay. Now, having said all of that, where
 18 are we in terms of the trustee and bankruptcy and Judge
 19 Carney and where are you at? Because I read his order and
 20 his order seems to say I agree with Judge Crow has to
 21 control the discovery in this case but it runs the risk of
 22 having conflicting orders. And I kind of agree with that,
 23 as well. So where are we at in terms of discovery with the
 24 trustee?

25 MR. ACKERMAN: Well, we need to back up a little

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1 bit.

2 THE COURT: Okay.

3 MR. ACKERMAN: Okay. Your Honor, when this
 4 matter started, and I know you've heard some of it but
 5 because it's been awhile, I would like a little latitude.

6 THE COURT: Sure. We got the day so I'm here.

7 MR. ACKERMAN: Initially when this case began the
 8 prior law firm representing Mr. Epstein issued a subpoena
 9 to the bankruptcy trustee that was in possession of records
 10 that we believe were related to this lawsuit. Okay. That
 11 met -- were relevant to the claims that had been pled. At
 12 that time Mr. Scarola did not object to the issuance of the
 13 subpoena and I have that here. Okay. When the subpoena
 14 was served on the bankruptcy trustee we then had four or
 15 five or six motions filed on the grounds of privilege. And
 16 since the bankruptcy trustee controlled and was directing
 17 those matters before Judge Ray a special master was agreed
 18 by the party to be appointed.

19 Now, also at that time -- and this is going to come up
 20 in answer to one of these other motions -- one of the other
 21 creditors, razorback, had also subpoenaed substantially the
 22 same amount of documents. Substantially subpoenaed the
 23 same documents that we had subpoenaed. And it was their
 24 understanding that they were going to be participating in
 25 this proceeding with Judge Carney. Now, each time we got

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1 up to a deadline there was an order, order given to the
 2 Farmer firm and Mr. Edwards to prepare a privilege log.
 3 They were given numerous extensions.

4 THE COURT: Just so I understand. The Farmer
 5 firm is now where these cases are at or went to after the
 6 Rothstein --

7 MR. ACKERMAN: That's correct. And that's where
 8 Mr. Edwards is now. And they had lodged only privilege
 9 objections as to attorney-client and work-product materials
 10 as to this subpoena. When the special master was appointed
 11 we began a series of meetings and hearings to try and deal
 12 with these special master issues. And what that ultimately
 13 culminated in was an agreement, a confidentiality
 14 agreement, where Mr. Scarola's clients would produce,
 15 approximately, five boxes of documents that were designated
 16 work-product, attorney's eyes only, which meant only the
 17 lawyers for Mr. Epstein could look at them. And what they
 18 designated to be irrelevant documents, which they believed
 19 had nothing to do with the case, but felt that it was
 20 easier to produce them and put them under a confidentiality
 21 order so, and those were allowed to be shown to our client.

22 Now, if any of the parties believed that any of those
 23 documents were relevant or appropriate to be used in this
 24 proceeding, they were to take that to the special master.

25 THE COURT: You say this proceeding, you mean my

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<p>1 proceeding?</p> <p>2 MR. ACKERMAN: This case, your case. Okay. And</p> <p>3 they were to be gone to the special master. Now, about</p> <p>4 that time we were arguing the motion for summary judgment.</p> <p>5 Counsel for Edwards had argued to Judge Ray that, wait,</p> <p>6 until the summary judgment motion is argued, defer ruling.</p> <p>7 All of those were denied.</p> <p>8 At one point they had asked you to pull back the</p> <p>9 subpoena that had been issued on these matters and you</p> <p>10 denied that. So then they prepared a privilege log that</p> <p>11 was, clearly -- it's in our binder. There is two privilege</p> <p>12 logs.</p> <p>13 THE COURT: Fortunately, I looked at it.</p> <p>14 MR. ACKERMAN: The first one, clearly, doesn't</p> <p>15 meet any requirements regarding the privilege log so we</p> <p>16 filed motions directed to that. The special master ruled</p> <p>17 that you have to, at least, identify the people on it. We</p> <p>18 felt that the log was also inadequate, okay, for other</p> <p>19 reasons. And so the special master ordered a master list</p> <p>20 of the people, a master list prepared, which is here, that</p> <p>21 identified who the people were. Okay. And in the meantime</p> <p>22 Razorback went ahead and filed a motion before Judge Ray to</p> <p>23 participate in this special master hearing.</p> <p>24 Then we came in court on a hearing filed by a</p> <p>25 non-party who, Spencer Kuvin, had argued that since he was</p>	<p>1 MR. ACKERMAN: No. You did from subpoenas issued</p> <p>2 from this Court.</p> <p>3 THE COURT: It could have only been your</p> <p>4 subpoenas or Mr. Scarola's subpoenas.</p> <p>5 MR. ACKERMAN: Correct.</p> <p>6 THE COURT: Somebody read my order otherwise.</p> <p>7 They can continue with any other --</p> <p>8 MR. ACKERMAN: No, no, I'm not saying that.</p> <p>9 THE COURT: Okay. I'm sorry.</p> <p>10 MR. ACKERMAN: If I said that, what I'm trying to</p> <p>11 say your stay applied to subpoenas issued from this Court</p> <p>12 to the bankruptcy trustee.</p> <p>13 THE COURT: Right.</p> <p>14 MR. ACKERMAN: Okay. And at that point in time</p> <p>15 we were at the point in time where you said we were in the</p> <p>16 midst of the hearings that dealt with the amended complaint</p> <p>17 and that you needed to have the complaint done. And we had</p> <p>18 previously told you that we had, we believed we had a good</p> <p>19 faith basis for this complaint. We could demonstrate that</p> <p>20 Rothstein was definitely guilty of a crime. We could</p> <p>21 demonstrate definitely that the Epstein case files were</p> <p>22 shown to investors for the purpose of getting money that</p> <p>23 ultimately came in to the Rothstein firm. We can show that</p> <p>24 Mr. Rothstein, and some of these are in the complaint, I'm</p> <p>25 not re-arguing that, but, we could show at that time that</p>
<p>Page 43</p> <p>1 identified on the privilege log as receiving some of these</p> <p>2 documents, he was going to assert a joint prosecution,</p> <p>3 joint defense type of privilege. Now, when we were at that</p> <p>4 hearing, at that point in time the special master had</p> <p>5 generated his report. The special master had set up a time</p> <p>6 when we were going to go through, he was going to go</p> <p>7 through the documents with everybody in the room and, at</p> <p>8 least, eliminate the ones that are obviously not privilege,</p> <p>9 which you can do by looking at this log. I mean, one can</p> <p>10 do, okay, by obviously looking at it. And then we were</p> <p>11 going to break them down into what issues related to what</p> <p>12 privileges because there was a different standard of proof</p> <p>13 that related to the different privilege. For example, it's</p> <p>14 the burden of the plaintiff to establish the joint defense</p> <p>15 agreement and we were going to do that.</p> <p>16 Now, as that was occurring, Mr. Kuvin came in and</p> <p>17 argued his position and the Court was stating its position</p> <p>18 that you were in charge of the privileges, which we agreed.</p> <p>19 And that you were in charge of discovery, okay. And you</p> <p>20 put a stay on any discovery to the special master and it</p> <p>21 effectively shut down the special master. I mean, you put</p> <p>22 a stay on any subpoenas to the bankruptcy trustee.</p> <p>23 THE COURT: From this Court?</p> <p>24 MR. ACKERMAN: From this Court.</p> <p>25 THE COURT: I didn't do anything to anybody else.</p>	<p>Page 45</p> <p>1 Mr. Rothstein made specific representations to these</p> <p>2 investors about what he could do. And then we can show</p> <p>3 that Mr. Edwards carried those out. And that Mr. Edwards</p> <p>4 testified in his deposition that it was a very limited</p> <p>5 number of people involved. And then what, in fact,</p> <p>6 occurred was that Mr. Rothstein was meeting with Mr.</p> <p>7 Edwards and the rest of the firm on this and they were</p> <p>8 having meetings about it, thus, providing the link to the</p> <p>9 theory of our cause of action as the abuse of process. And</p> <p>10 the theory of abuse of process related to a misuse of the</p> <p>11 judicial system. The use of these proceedings for some</p> <p>12 other purpose, that purpose to further this Ponzi scheme.</p> <p>13 It meant going after his friends individually. Putting --</p> <p>14 taking steps and taking actions that had nothing to do with</p> <p>15 those, those victim cases.</p> <p>16 Now, at that point in time we had subpoenaed the</p> <p>17 communications between Rothstein and the various investors,</p> <p>18 which is the first subpoena. And the second subpoena</p> <p>19 related to the law enforcement subpoenas. Because at that</p> <p>20 point in time, for one respect, Mr. Edwards has subpoenaed</p> <p>21 and has requested, we're going to get to it later, records</p> <p>22 between Mr. Epstein and the U.S. Attorney's Office. He has</p> <p>23 used those records as part of a summary judgment</p> <p>24 proceeding. We believe in the records that have been</p> <p>25 produced to us that they specifically, particularly when</p>

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1 you look at some of the items in the privilege log, that
 2 they specifically undertook the course of action to further
 3 this Ponzi scheme to interfere with a non-prosecution
 4 agreement that had already been reached with the
 5 government. Okay.

6 It's not a tortious interference claim. It's a claim
 7 where they were abusing the Court system by using discovery
 8 mechanisms to bring about a breach or get the government to
 9 come to regress or retreat from the agreement it had
 10 entered into it after Mr. Epstein had pled guilty. Had
 11 served his time. Was on probation and already had
 12 substantial reliance and change of position on agreement.
 13 And that was done, we believe, to show investors what they
 14 were doing to advance this Ponzi scheme. So when we sent a
 15 letter -- a subpoena, which is why that is in the pleading,
 16 because it's evidence relating to the interference. This
 17 was a CVR case. And that case was filed by Mr. Edwards in
 18 2009, okay. At the time his cases were pending with
 19 Mr. Epstein. There is a long lapse of what occurred, okay,
 20 until these cases get settled. And then he files a
 21 pleading in the federal court and he had represented in the
 22 underlying case that the documents he wanted regarding the
 23 law enforcement documents were necessary because they might
 24 lead to other discoverable evidence in that case. And then
 25 in the CVR case, which is pending before Judge Marra now,

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1 he said I finally got the documents I wanted for the CVR
 2 case. So he, in fact, misrepresented to a magistrate why
 3 he wanted those documents.

4 So then there is an order entered by the magistrate
 5 that says any of the documents that were produced -- and I
 6 have a copy of it here -- any of the documents that were
 7 produced pursuant to that order cannot be used in any
 8 proceeding absent a ruling by the Court on those issues.
 9 Now, some of those documents have already been filed.

10 THE COURT: The Court meaning?
 11 MR. ACKERMAN: You.
 12 THE COURT: Okay.
 13 MR. ACKERMAN: The sitting magistrate or judge
 14 for which the documents are sought to be used, okay. And
 15 those are some of the documents that are in the summary
 16 judgment binders. Okay. And those were done for the
 17 purpose of being able to bring -- to make their summary
 18 judgment argument.

19 Now, when we got to that stage in April, based on the
 20 Court's ruling we -- the special master proceeding stopped.
 21 We indicated to the Court at that time that we believed
 22 that on its face some of these matters in the privilege log
 23 the Court can look at and rule on and determine that they
 24 were not privilege and they are not waived and we were
 25 going to request the Court to do that. As far as Judge Ray

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1 is concerned, the Court, you, have the ability to determine
 2 these matters yourself in terms of how it affects your
 3 case. He is not going to be doing anything, and he stated
 4 that on the record in one of the proceedings in the
 5 bankruptcy court, that he's not going to be making an in
 6 camera review. He's going to allow you to handle that
 7 process, okay. I mean, you as opposed to him ruling on the
 8 privilege issue, is what I'm trying to say.

9 Now, that's pretty much where we are in terms of --

10 THE COURT: Let me ask you a question before you
 11 proceed. If there are other parties seeking these
 12 documents for which there was a special master appointed,
 13 why did my order, which merely stayed my subpoenas, stop
 14 production of documents in the trustee if other people are
 15 seeking these documents for reasons unrelated to this
 16 lawsuit?

17 MR. ACKERMAN: Here's what happened. Your order
 18 stopped it for us.

19 THE COURT: I understand that.

20 MR. ACKERMAN: Okay. And I have a copy of the
 21 pleadings, if you need to see them. But Razorback --

22 THE COURT: I read the order. I know what it
 23 says.

24 MR. ACKERMAN: Razorback went in there and said
 25 we want to do a 2004 exam of Rothstein and we want these

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1 records. And the records are substantially the same as the
 2 ones we wanted. They filed a motion to clarify this in
 3 front of Judge Ray, okay. And this is where one of the
 4 issues came up that he was not going to be ruling on stuff
 5 that related to you. And I have in the binder there the
 6 transcript of the hearing where Mr. Scarola and his clients
 7 agreed to produce the documents that they are now claiming
 8 privilege on and have produced those documents to
 9 Razorback. So the documents that we're seeking here for
 10 which they claim privilege, for which we have a
 11 confidentiality agreement, they have produced voluntarily
 12 to a third-party. We believe there's a waiver. We believe
 13 that invalidates the confidentiality agreement. And
 14 basically what happens is we're here arguing untold
 15 privilege issues when the very documents that we're seeking
 16 they have voluntarily turned over to a third-party without
 17 any issues of privilege. Without any issues of
 18 confidentiality. And that's what happened to them. Those
 19 documents were turned over and that's why that transcript
 20 of that proceeding is in there because we're prepared to
 21 argue that many of the documents that we have requested for
 22 which privilege claims have been brought are now waived.
 23 And I've also asked to use some of the documents, to use
 24 confidential documents because I believe it supports our
 25 cause of action and I believe that the confidentiality

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<p>1 provisions are now waived.</p> <p>2 So the answer to your --</p> <p>3 THE COURT: That makes it as clear as mud. I</p> <p>4 know -- just understand my frustration. It's very</p> <p>5 complicated when you, you know, you're telling me all of</p> <p>6 this and it's not really clear to me. Let me ask a simple</p> <p>7 question. The privilege here, the attorney-client</p> <p>8 privilege belonged to the clients, are they involved in</p> <p>9 this at all? I mean, is anybody protecting the rights of</p> <p>10 these women that were --</p> <p>11 MR. ACKERMAN: Your Honor, Mr. Farmer and</p> <p>12 Mr. Edwards have asserted attorney-client privilege on</p> <p>13 behalf of those clients but many of these privileges that</p> <p>14 they have asserted are work-product.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. ACKERMAN: Or there is one with confidential</p> <p>17 source so we have no idea.</p> <p>18 THE COURT: Just so I'm understanding, are there</p> <p>19 two separate sets of documents, one is in the hands of the</p> <p>20 new law firm and the ones that are in the hands of the</p> <p>21 trustee and bankruptcy from the old Rothstein firm?</p> <p>22 MR. ACKERMAN: Yes and no.</p> <p>23 THE COURT: Yes and no. Okay. Good.</p> <p>24 MR. ACKERMAN: The first set of documents, okay,</p> <p>25 which were the subject of the first subpoena and our first</p>	<p>1 files or materials, as well as anything for the new firm</p> <p>2 are all, Farmer has all of those documents?</p> <p>3 MR. ACKERMAN: Those were documents that came,</p> <p>4 that the trustee picked up --</p> <p>5 MR. SCAROLA: Yes.</p> <p>6 MR. ACKERMAN: Yes.</p> <p>7 THE COURT: And they are in the hands of, in</p> <p>8 addition, they are in the hands of the special master, he</p> <p>9 has those?</p> <p>10 MR. ACKERMAN: Right.</p> <p>11 THE COURT: Okay.</p> <p>12 MR. ACKERMAN: Now, there is a third set of</p> <p>13 documents, okay. They are called Qtask and the Fortress</p> <p>14 documents, okay. Those are the softwares that managed the</p> <p>15 cases within the Rothstein firm. The trustee is still</p> <p>16 litigating to get those documents with Qtask. The Court</p> <p>17 has --</p> <p>18 THE COURT: Who is -- help me out here. Who is</p> <p>19 Q?</p> <p>20 MR. ACKERMAN: Qtask is a company that supplied</p> <p>21 the software system for private communications and, also,</p> <p>22 for case management to the Rothstein firm. We have</p> <p>23 received through exhibits and other depositions in the</p> <p>24 bankruptcy case, that Rothstein used some of this secure</p> <p>25 software communications to communicate with the investors</p>
<p>Page 51</p> <p>1 request to produce, the trustee turned over those documents</p> <p>2 responsive to that to the special master and to the new law</p> <p>3 firm. The new law firm has also turned those documents</p> <p>4 over to Razorback.</p> <p>5 The second set of documents, which we're here on,</p> <p>6 relate to our subpoena to the trustee for law enforcement.</p> <p>7 Basically, communications between law enforcement agencies</p> <p>8 and the RRA law firm. Those documents -- and those were</p> <p>9 the basis of a specific request identifying people -- and</p> <p>10 those documents have been gathered by the trustee on a disc</p> <p>11 ready to be produced. And they have not been turned over</p> <p>12 to anyone because the Court's stay order that said any</p> <p>13 subpoena directed to the trustee is stayed.</p> <p>14 So the trustee has not turned over those documents. Those</p> <p>15 are in the possession of the trustee.</p> <p>16 THE COURT: Okay. So there are -- let me --</p> <p>17 there are two sets of documents then. The law enforcement</p> <p>18 documents, which are in the possession of the special</p> <p>19 master of the trustee proceeding, right?</p> <p>20 MR. ACKERMAN: The law enforcement documents are</p> <p>21 just in the possession of the trustee.</p> <p>22 THE COURT: Trustee.</p> <p>23 MR. ACKERMAN: Not the special master.</p> <p>24 THE COURT: They're in possession of the trustee.</p> <p>25 The other documents, which were the old Rothstein firm</p>	<p>Page 53</p> <p>1 and people in his firm about his Ponzi scheme as related to</p> <p>2 the Epstein cases.</p> <p>3 Now, those records were subpoenaed and sought by the</p> <p>4 bankruptcy trustee from a company named Qtask. That</p> <p>5 company is owned and controlled by former Rothstein</p> <p>6 lawyers, Bob Buschel, and others. They have been ordered</p> <p>7 by the bankruptcy court to produce those records and have</p> <p>8 failed to do so and now are subject to -- and have been</p> <p>9 ordered under pain of contempt, including incarceration of</p> <p>10 the individuals, to produce those records. They have been</p> <p>11 assessed punitive fines and attorney's fees for not</p> <p>12 producing them as of --</p> <p>13 THE COURT: So we have three sets of documents,</p> <p>14 am I correct now? Okay.</p> <p>15 MR. ACKERMAN: So that's one of the reasons why</p> <p>16 in terms -- I understood your question as to the ones we're</p> <p>17 dealing with now but I need to alert the Court there is</p> <p>18 another group of documents that would be responsive to our</p> <p>19 initial subpoena but that the bankruptcy trustee would need</p> <p>20 to produce when Qtask and the Fortress documents become</p> <p>21 available.</p> <p>22 THE COURT: Okay. So we have the Rothstein and</p> <p>23 Farmer documents, the file, whatever, may be in existence.</p> <p>24 We have a law enforcement file that dealt with Rothstein.</p> <p>25 And you have the Qtask, I guess, software system.</p>

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<p>1 MR. ACKERMAN: And Fortress.</p> <p>2 THE COURT: That have not been produced yet but</p> <p>3 will at some point be in possession of the trustee in</p> <p>4 bankruptcy.</p> <p>5 MR. ACKERMAN: Correct.</p> <p>6 THE COURT: What we're dealing with, at least at</p> <p>7 this point in time in terms of your production request,</p> <p>8 deals with the Rothstein/Farmer documents and the law</p> <p>9 enforcement documents; is that correct?</p> <p>10 MR. ACKERMAN: Yes.</p> <p>11 THE COURT: Okay. So where do we start then?</p> <p>12 That's where I want to -- where do you want to start with</p> <p>13 this? I mean, one of the problems, again, is that -- let</p> <p>14 me stop. Start with this. Is it possible that since</p> <p>15 Judge Carney has already spent, I imagine, countless hours</p> <p>16 looking at this, that he could do it for me as well as the</p> <p>17 trustee in bankruptcy?</p> <p>18 MR. ACKERMAN: The problem we've had, Your Honor,</p> <p>19 is that we believe that the more economical method to do</p> <p>20 this would be for you to take a look at the privilege log</p> <p>21 and determine initially whether they have been waived and</p> <p>22 some of the motions here are directed to that. And --</p> <p>23 THE COURT: Maybe I should stop and ask how many</p> <p>24 documents are we talking about? If we're talking fifty</p> <p>25 thousand to a hundred thousand --</p>	<p>1 because of either the inadequacy of the logs, because they</p> <p>2 have failed to comply with the Teague requirements, and we</p> <p>3 believe if you go through and see that some of the matters</p> <p>4 clearly aren't privileged on their face, that number will</p> <p>5 be greatly reduced and then you can do the in camera</p> <p>6 review. It would also give you an opportunity to</p> <p>7 understand what we're trying to accomplish and what we're</p> <p>8 trying to plead in this case because then you could review</p> <p>9 the documents that we have. One of the reasons I want to</p> <p>10 use --</p> <p>11 THE COURT: These documents are in some location?</p> <p>12 MR. ACKERMAN: Yes, they're on discs.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. ACKERMAN: They're on a disc. Okay. You can</p> <p>15 have hard copies, too, if you wish, okay. Either way it</p> <p>16 can be done. But one of the reasons, one of my other</p> <p>17 motions that I wanted to get directed to goes to this</p> <p>18 matter because we had this confidentiality agreement where</p> <p>19 we agreed to keep them secret. I submitted those documents</p> <p>20 to you in camera. Those are documents we wanted to start</p> <p>21 using now in discovery for depositions because part of the</p> <p>22 issue is we can't --</p> <p>23 THE COURT: These?</p> <p>24 MR. ACKERMAN: Those ones.</p> <p>25 THE COURT: Okay.</p>
<p>Page 55</p> <p>1 MR. ACKERMAN: No.</p> <p>2 THE COURT: -- there is no way.</p> <p>3 MR. ACKERMAN: If you look at the special master</p> <p>4 report --</p> <p>5 THE COURT: I did read. He said like sixteen</p> <p>6 hundred documents, or.</p> <p>7 MR. ACKERMAN: Those are sixteen hundred entries.</p> <p>8 They are not necessarily documents.</p> <p>9 THE COURT: That means it could be thirty</p> <p>10 documents per entry or something like that.</p> <p>11 MR. ACKERMAN: I'm sorry, sixteen hundred</p> <p>12 documents.</p> <p>13 MR. SCAROLA: May I address the Court?</p> <p>14 MR. ACKERMAN: Twenty-eight thousand pages.</p> <p>15 THE COURT: What I'm going to do, I'm going to</p> <p>16 let him finish, take a break for lunch. We'll come back</p> <p>17 and you tell me what your position is, okay.</p> <p>18 MR. SCAROLA: I would like to take five minutes</p> <p>19 before lunch because it may keep us from coming after</p> <p>20 lunch.</p> <p>21 MR. ACKERMAN: I don't know if I can finish. But</p> <p>22 the point -- I want to answer your question is that the</p> <p>23 breakdown we're talking about, sixteen hundred documents</p> <p>24 that are identified on the privilege log. Now, we believe</p> <p>25 that if you review the privilege log and make rulings</p>	<p>Page 57</p> <p>1 MR. ACKERMAN: Okay. We can't really effectively</p> <p>2 take discovery --</p> <p>3 MR. SCAROLA: No objection.</p> <p>4 THE COURT: I'm sorry?</p> <p>5 MR. SCAROLA: No objection.</p> <p>6 THE COURT: Okay.</p> <p>7 MR. SCAROLA: I don't mean to interrupt but I can</p> <p>8 save some time.</p> <p>9 THE COURT: Okay. Let him have five minutes and</p> <p>10 we'll come back and let you say whatever you want,</p> <p>11 Mr. Ackerman, okay. And then come back, okay. Go ahead,</p> <p>12 sir.</p> <p>13 MR. SCAROLA: There are specific documents that</p> <p>14 have been identified by Mr. Ackerman from among those</p> <p>15 documents that have been provided to them pursuant to an</p> <p>16 agreement that they would like to use. As long as it is</p> <p>17 expressly understood that by agreeing to the use of those</p> <p>18 specific documents we have not prejudiced any assertion of</p> <p>19 privilege with regard to any other documents, we're</p> <p>20 prepared to allow them to use them. They are worthless. I</p> <p>21 really don't care whether he uses them or not. I just</p> <p>22 don't want to impact upon any other privilege argument that</p> <p>23 we may make by making that concession. I am obliged to</p> <p>24 make sure that we continue to protect all of our other</p> <p>25 privileges because we don't have the right to waive</p>

<p style="text-align: right;">Page 58</p> <p>1 attorney-client privilege. Unlike the Fifth Amendment 2 privilege, which is controlled by Mr. Epstein, as much as 3 we might like to take all of this and put it on the floor 4 in this courtroom for Your Honor and everybody else in the 5 world to take a look at because we have nothing to hide, we 6 can't do that.</p> <p>7 THE COURT: I understand that.</p> <p>8 MR. SCAROLA: Okay. So we're obliged to assert 9 our privilege.</p> <p>10 THE COURT: It's not your privilege.</p> <p>11 MR. SCAROLA: We are obliged to assert the 12 privilege on behalf of our clients. Not only on behalf of 13 the clients who we represented whose claims were settled 14 but also because that same information is relevant and 15 material to ongoing claims against Mr. Epstein, we must 16 protect the work-product privilege, as well, because of the 17 obligation that we have to protect the interests of those 18 other clients. That's the position that we are in. Now, 19 before we ever get to questions about privilege and an 20 obligation to prepare a privilege log, and an in camera 21 inspection, the threshold issue is relevance. And it was 22 as a consequence of Your Honor's recognition of the fact 23 that there was a threshold relevance issue that Your Honor 24 stayed enforcement of any subpoena or production request in 25 this Court until such time as the pleadings were clarified</p>	<p style="text-align: right;">Page 60</p> <p>1 haven't gotten to that point. One of the things that 2 really concerns me is the vagueness of the damage claims 3 here because that has to do with some of the discovery, for 4 example, that they can get of you. So, I mean, I guess I 5 can make decisions on whether or not privileges have been 6 waived. If it's been waived, it's been waived.</p> <p>7 MR. SCAROLA: Still doesn't resolve the relevance 8 issue, Your Honor.</p> <p>9 MR. ACKERMAN: I need to respond.</p> <p>10 THE COURT: I understand that. But I can make a 11 determination -- I'm sorry. Go ahead.</p> <p>12 MR. ACKERMAN: I didn't mean to interrupt. I'll 13 let you finish.</p> <p>14 THE COURT: Please, any help I can get.</p> <p>15 MR. ACKERMAN: Okay. There is a two part process 16 with this relevance test. And the first part, we have 17 argued this back and forth several times with you and with 18 the special master, which is why we had some frustration 19 with that proceeding, when this subpoena went out with the 20 complaint that it was operating under, the first complaint 21 that everyone has been referring to, there was absolutely 22 no objection on relevance filed at that time. And under 23 the rules of procedure that is when it's supposed to be 24 done. We argued relevance. They argued, attempted to 25 bring up relevance. Really did not bring up relevance in</p>
<p style="text-align: right;">Page 59</p> <p>1 so that the relevance issues could be determined. 2 We are still in that same position today as a consequence 3 of the rulings that Your Honor has just made. We can't go 4 any further this afternoon. As much as I would like to, to 5 help to resolve these issues because the same threshold 6 problem exists. We have a relevancy concern that must be 7 addressed before any privilege concern can be addressed. 8 That's our position, sir. So I would like to get it done 9 today. We've got today set aside. I would love to be able 10 to resolve all of these issues. It cannot be done and 11 that's why I suggested that I needed five minutes before 12 lunch, Your Honor. I don't think I took three.</p> <p>13 MR. ACKERMAN: I have a response to that but we 14 can do it after lunch. It's up to you.</p> <p>15 THE COURT: No, go ahead. Actually, that was my 16 concern initially because, I mean, from day one in this 17 case, Mr. Ackerman, and I think I articulated this a number 18 of times the problem I had initially with the complaint. I 19 know you are not the author of the original complaint, 20 okay, I know that. Was that I couldn't get a handle on 21 what exactly the claims were and what the issues were going 22 to be to determine what was relevant or calculated to lead 23 to admissible evidence in the case. I think by filing your 24 amended complaint, we're getting it down to, I think where 25 we're going to ultimately end up at some point but we still</p>	<p style="text-align: right;">Page 61</p> <p>1 front of Judge Ray. The only motions that were filed in 2 front of Judge Ray related to privilege. Once we got the 3 special master we started -- they started arguing relevance 4 again. And one of the hearings in February the special 5 master ruled, I'm not going back to relevance. That ship 6 has sailed. You could have objected when this subpoena 7 went out the special master ruled. And now we're at the 8 point of doing the privilege stuff. That's the first 9 aspect of it.</p> <p>10 The second aspect of it is that there is enough 11 matters here that the Court should rule on to allow some 12 discovery without the need of another complaint. Because 13 it allowed the process to proceed in some areas. The 14 damages, you know, that's, that's not a significant part of 15 this, okay. That's not -- the part we're looking for and 16 the subpoena we're talking about deals with documents to 17 the trustee and the firm related to the Ponzi scheme.</p> <p>18 THE COURT: Let me suggest to you, however, that 19 the other concern here has to do with my schedule, my 20 ability to devote time to reviewing documents and privilege 21 logs for things that may ultimately end up not relevant to 22 the lawsuit. Okay. We're talking about thousands and 23 thousands and thousands of documents. I'm not a special 24 master getting paid \$300 an hour to look at documents. 25 I've got eighteen to two thousand other cases out there.</p>

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<p>1 You guys want me to sit down and spend two days looking at 2 documents, it seems to me that I ought to make a 3 determination as to whether they're relevant before I do 4 that but, you know, I understand your position.</p> <p>5 MR. ACKERMAN: The determination of the relevance 6 is on the request. That's what they're objecting to and 7 they have not -- they've waived the request. You can look 8 at the subpoena.</p> <p>9 THE COURT: I understand that but then I have to 10 look through ten thousand documents to determine whether 11 they're privileged or not.</p> <p>12 MR. ACKERMAN: I don't think -- my point earlier 13 was is that when you make --</p> <p>14 THE COURT: I don't think you're understanding 15 what I'm saying. What I'm saying is it's important to me, 16 because I don't want to spend valuable Court time reviewing 17 documents to determine whether they are privileged or not 18 privileged or whether the privilege has been waived, if 19 those documents are not relevant to this lawsuit. That's 20 my point. Does that make any sense to you? You know, you 21 know, there is a finite amount of time that I have 22 available to do this and I'm going to spend as much time as 23 necessary to get it done. But I would like to be able to, 24 at least, do it in a rational manner rather than just go 25 out and look at documents. And because I would have to</p>	<p>1 confidential sealed documents, which is Tab 4C, the ones 2 here in my hand, as I understand Mr. Scarola agreed that 3 those documents may be utilized by the plaintiff in this 4 lawsuit, as long as it's clear, and I so rule, that by 5 doing so is not waiving any privilege associated with any 6 documents whatsoever on any basis.</p> <p>7 MR. SCAROLA: Thank you, sir.</p> <p>8 MR. KNIGHT: Thank you, Your Honor.</p> <p>9 (LUNCH BREAK)</p> <p>10 THE COURT: Anybody want to say anything else 11 before we start plowing through some of the motions?</p> <p>12 MR. SCAROLA: Did you have a nice lunch, sir?</p> <p>13 THE COURT: Well, no. The company was good.</p> <p>14 MR. ACKERMAN: May I take off my coat?</p> <p>15 THE COURT: Excuse me?</p> <p>16 MR. ACKERMAN: Mind if I take off my coat?</p> <p>17 THE COURT: Sure.</p> <p>18 MR. ACKERMAN: It's a little warm.</p> <p>19 THE COURT: My deputy has on a heavy jacket. She 20 is saying it's cold.</p> <p>21 MR. WEINBERG: Afternoon, Your Honor. I've been 22 nominated by Mr. Knight and Mr. Ackerman to try to respond 23 to the Court's last set of inquiry, which is how we, as 24 counsel, can help facilitate the privilege review and how 25 we can narrow down the magnitude of sixteen hundred</p>
<p>Page 63</p> <p>1 look at the documents, it seems to me, unless it's been 2 waived specifically, Mr. Ackerman, or are already, then for 3 me to determine whether they are or are not privileged it 4 requires me to look at them, does it not?</p> <p>5 MR. ACKERMAN: Yes. But I don't believe that the 6 issue of relevance is part of it.</p> <p>7 THE COURT: You are not following me, I guess.</p> <p>8 MR. ACKERMAN: They have claimed. We have sent a 9 subpoena. The subpoena has been responded to based on the 10 subpoena. Based on specific certain terms relating to the 11 subpoena. And the documents you are going to be reviewing 12 are work-product relating to the Epstein case.</p> <p>13 THE COURT: Maybe I'm not making sense and I 14 apologize. You don't understand what I'm asking or what 15 I'm suggesting. I understand what your position is.</p> <p>16 MR. ACKERMAN: I understand the overall concept.</p> <p>17 THE COURT: I understand your position that these 18 have been waived, okay. What I'm concerned about is the 19 time necessary to review --</p> <p>20 MR. ACKERMAN: That I understand. I understand 21 the time component.</p> <p>22 THE COURT: Okay. Let's take a short break for 23 lunch. Be back here by 1:30. We'll talk about -- I'm 24 going to go forward this afternoon, do as much as I can on 25 this to get as much done as I can. So, at least, on the</p>	<p>Page 65</p> <p>1 documents, which might, at least, theoretically require 2 document by document review down to a more manageable 3 perspective. I think there are two ways --</p> <p>4 MR. SCAROLA: Excuse me. Before we proceed could 5 I know which motion we're on? I suggest that maybe the 6 best thing to do, if we're going to proceed here, is to 7 focus on those matters that are currently pending. And I 8 have no objection to taking them in the order in which they 9 appear in the notebook with which the Court has been 10 provided. And that would mean the first motion before the 11 Court is our motion for reconsideration regarding our 12 discovery request.</p> <p>13 THE COURT: First thing, I kind of asked counsel 14 to kind of give me some overview of the discovery process 15 and what we're dealing with here and I assume this is what 16 we're still dealing with.</p> <p>17 MR. KNIGHT: This is in response, Your Honor.</p> <p>18 THE COURT: That's what I want to do and then 19 we'll deal with the motions in order as we have them. 20 Okay.</p> <p>21 MR. WEINBERG: Thank you, Your Honor. I'm not a 22 civil lawyer. I've been asked my by colleagues to help, 23 particularly, because of some expertise in privileged areas 24 and that's the reason they've asked me to address this 25 issue. There is two ways.</p>

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<p>1 One Mr. Ackerman, at an appropriate time, will address 2 with the Court and that is whether there is a legally 3 enforceable waiver, not of the relevancy issue that was 4 previously addressed, but of the privilege issue that would 5 make a particularized document by document privilege 6 analysis unnecessary.</p> <p>7 The second is more difficult. Privilege logs are 8 important. The case law that's been provided to Your 9 Honor, principally, the Teague case requires more than 10 Mr. Scarola has provided in terms of this privilege log. 11 It's particularly important in terms of giving us the 12 ability to narrow down from the sixteen hundred documents 13 to have any potential ability to narrow it down so we're 14 asking the Court to review not sixteen hundred, but two 15 hundred, three hundred, four hundred. I can't promise you 16 in good faith that a better privilege log will permit us to 17 reduce the number of documents that we believe potentially 18 could be related to the issues that ultimately will be 19 litigated before Your Honor. But as it stands now there 20 are privileged entries, for instance, RRA, meaning 21 Rothstein firm lawyers, to Mr. Edwards. Mr. Edwards to 22 Rothstein firm lawyers. We don't even know which Rothstein 23 firm lawyers they are. The log lacks that degree of 24 particularization which the rules and the case law 25 requires.</p>	<p>1 of his clients. So this is that rare firm where there 2 can't be a presumption of ethics, a presumption of legality 3 and to simply tell us in a log the communications were 4 with, quote, "RRA lawyers" or with, quote, "investigators" 5 doesn't help resolve whether they're in the category of 6 ethical lawyering or criminal fraud, which would be an 7 exception to the privilege.</p> <p>8 There is also, as a result of one of the documents 9 that Mr. Scarola didn't object to us using, an e-mail --</p> <p>10 THE COURT: Let me back up. I thought the crime 11 fraud section dealt with fraud or crime being committed by 12 the client not the attorney.</p> <p>13 MR. WEINBERG: Not necessarily, Your Honor. 14 Crime fraud exception has been used over and over again, 15 for instance, by the government when they are investigating 16 lawyers. And this really is why I'm here because before 17 Judge Hoover I represented a criminal defense lawyer named 18 William Moran. He was one of many lawyers charged in the 19 late 1990's. His law firm was searched. Many more 20 documents than Mr. Scarola has identified in the log was 21 seized. The Court, Judge Hoover, appointed Lawrence 22 Barcello, who was a former Department of Justice 23 prosecutor, because crime fraud was key. And in that case 24 what was key is whether it was the crime or fraud of the 25 lawyers not of the lawyers' clients.</p>
<p>1 It's particularly important because once Your Honor 2 resolves the legal issue of waivers, which I believe can be 3 done on a category basis rather than a document by document 4 basis, Your Honor will ultimately be looking at whatever 5 reduced number of documents there are to put them in to 6 three categories.</p> <p>7 Number one, these are documents that, in fact, 8 demonstrate that Mr. Edwards gave proper ethical legal 9 representation to his three clients. These documents are 10 related to that representation. These documents are 11 therefore unwaived and privileged and not subject to an 12 exception under client fraud.</p> <p>13 The second category would be documents that may have 14 Mr. Edwards, he's either the author or the receiver but may 15 also involve that subset of lawyers in the Rothstein firm 16 who were not engaged in good faith ethical legal 17 representation of the three clients that Mr. Edwards 18 represented. Who he represented before he came to 19 Rothstein, who he represented afterward. There are, again, 20 twenty lawyers and nine paralegals and many investigators 21 and it's hard absent of a more particularized log and 22 absent the Court's review of some of the documents. For 23 instance, some go to Rothstein. Some go to RRA. May 24 involve an investigator named Jenny that Mr. Edwards said 25 he never asked him affirmatively to do anything on behalf</p>	<p>1 In this case, and, again, I'm not hurling any -- this 2 is not the time for me to make allegations.</p> <p>3 THE COURT: We'll deal with that later. I mean, 4 I just finished, probably, a three day trial on crime fraud 5 exception. I thought I read every case, including some of 6 the similar cases dealing with tobacco manufacturers 7 dealing with the crime fraud. And I'm having a little 8 trouble with that but I'll deal with it when we get to that 9 point. Because it seems to me --</p> <p>10 MR. WEINBERG: I will, if the Court wants --</p> <p>11 THE COURT: Not now.</p> <p>12 MR. WEINBERG: -- supplement through other cases. 13 But clearly the lawyer can't claim work-product when his 14 work-product is in furtherance of a crime. Mr. Rothstein 15 is a lawyer. He could not protect his documents from 16 litigation or from the government by saying you can't see 17 my documents, they are work-product. If the lawyer is 18 creating the crime, as Mr. Rothstein did, there's no 19 privilege to prevent third-parties or Courts from reviewing 20 the documents.</p> <p>21 THE COURT: We'll deal with that later. That's 22 not my understanding but I didn't think it was quite as 23 broad as you just stated but --</p> <p>24 MR. WEINBERG: Let me supplement that piece of 25 this argument --</p>

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<p>1 THE COURT: What you're telling me, though, is 2 that you feel that the amount of documents that I may be 3 able to, or have to review, once I get past the issue of 4 whether or not there has been a waiver on the relevance 5 issue, is that there may be waivers in regard to the 6 attorney-client privilege to begin with.</p> <p>7 And that second, we need a more particularized 8 privilege log because from the log itself we can't tell 9 whether some of these documents may or may not have other 10 exceptions applicable to them.</p> <p>11 MR. WEINBERG: Exactly, Your Honor. And I can't 12 say, I cannot make a representation that a better log will 13 reduce it to the number that the Court would feel 14 comfortable reviewing. If the Court is not comfortable 15 with what results from a more particularized log and after 16 hearing Mr. Ackerman on the waiver issue --</p> <p>17 THE COURT: I'm not sure comfort is the issue. 18 MR. WEINBERG: Economy. 19 THE COURT: I hate to tell you but in camera 20 reviews are probably the least favorite thing I do but you 21 have to do them. You have to do them. Okay. Anything 22 else you want to tell me? 23 MR. WEINBERG: Just lastly, Judge, we now, as one 24 of the documents Mr. Ackerman found in attorney's eyes 25 only, we have an e-mail from Cara Holmes --</p>	<p>1 from their prior jobs as an assistant U.S. 2 Attorney, with how documents fit into these three 3 categories. Thank you, sir.</p> <p>4 THE COURT: You know, I certainly have no 5 objection to appointing a special master, however, I'm not 6 a federal court. I don't have the authority to do that 7 absent the consent of the parties, as I understand it. 8 Although some of my colleagues try to get around that rule 9 by appointing a mediator, I think it's still, whatever you 10 call it, put a sign on a cow and call it a pig, it's still 11 a cow.</p> <p>12 You want to say anything else in response to that 13 before we get into the nitty-gritty of the specific motions 14 here?</p> <p>15 MR. SCAROLA: Very narrowly, Your Honor. I 16 disagree with the assertion that's been made that an 17 attorney's involvement in a crime or fraud in which the 18 client is not participating can constitute a waiver of the 19 client's privilege. The crime fraud exception is an 20 exception that waives the client's privilege when the 21 client is using an attorney to advance the client's crime 22 or fraud. I think that counsel is incorrect about the 23 assertion that he's made regarding the crime fraud 24 exception. But talking about these things in the abstract 25 is not going to advance this.</p>
<p>Page 71</p> <p>1 THE COURT: You're talking about these documents? 2 MR. WEINBERG: One of the lawyers at the 3 Rothstein firm. She was a former FBI agent and she says on 4 July 29, I think our best bet is to go after those close to 5 Epstein. And those would be the kind of gray documents 6 that Your Honor would have to make a document by document 7 analysis to determine does this document support good faith 8 litigation. Is it in relation to a proper representation 9 of Mr. Edwards' client or instead is some investigator 10 going off on an intrusive, violative conduct that only is 11 to further Mr. Rothstein's ambitions to try to inflate the 12 Epstein cases to advance his own investor scheme? I don't 13 have an answer because I don't have the documents. I'm not 14 making accusations about where any one document will fit. 15 I'm hopeful through a log that is more particularized we 16 can come back and say, Judge, we would like you to look at 17 the following three or four hundred. I can't represent we 18 can. If we can't, we would, of course, would then go and 19 recommend to the Court what Judge Hoovler did in this 20 massive law firm search, which is to consider the Court 21 looking at some of the documents, either on review or 22 de novo, and having a special master and, perhaps, a 23 special master with experience in crime fraud such as a 24 former U.S. Attorney. I know Mr. Goldberger can identify a 25 few from the community who would have ongoing experience</p>	<p>Page 73</p> <p>1 THE COURT: Okay. Let's go forward with so what 2 motion would be first up then? 3 MR. SCAROLA: It is our motion for 4 reconsideration of Your Honor's order sustaining objections 5 to requests for admissions and interrogatories propounded 6 to Mr. Epstein. 7 MR. ACKERMAN: Your Honor, before he proceeds, I 8 think that the actual discovery requests were left out of 9 the notebook for this. 10 THE COURT: Yeah, I've looked at the -- 11 MR. ACKERMAN: So I have -- the one for the 12 request to produce is in there. I have the interrogatories 13 and -- 14 THE COURT: I think I've got the request. 15 MR. ACKERMAN: Request to produce is there but I 16 don't think request for admissions. 17 THE COURT: The response. 18 MR. ACKERMAN: The response is there. But the 19 actual request and the interrogatories are not. 20 THE COURT: Okay. 21 MR. ACKERMAN: So you can put these in your book 22 at Three a. I apologize for not having it. 23 THE COURT: Okay. 24 MR. SCAROLA: Your Honor, this motion for 25 reconsideration cites to the now less than recent Fourth</p>

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<p>1 DCA opinion in Alvarez versus Cooper Tire where the Court 2 finds it to have been error for the trial Court to have 3 restricted discovery, which I suggest to Your Honor is even 4 less clearly related to the allegations that are pending 5 then the allegations in this case and their relationship to 6 our request for admissions and interrogatories. If we can 7 take a look quickly at --</p> <p>8 THE COURT: Let me ask you a question about that. 9 That's Judge Fine's tire case, right?</p> <p>10 MR. SCAROLA: Yes.</p> <p>11 THE COURT: As I understand, is that still on 12 rehearing?</p> <p>13 MR. ACKERMAN: Yes, and I have a docket sheet for 14 you to look at.</p> <p>15 THE COURT: I'm concerned that case is gone a 16 little too far in the discovery and I, well, I don't know 17 what's going to happen.</p> <p>18 MR. SCAROLA: Let me suggest to Your Honor that 19 regardless of whether the broader parameters that are 20 described in that case are or are not applicable. I think 21 that Your Honor simply misapprehended what the appropriate 22 scope of discovery in this case is.</p> <p>23 THE COURT: Okay.</p> <p>24 MR. SCAROLA: And I call your attention. We're 25 looking at --</p>	<p>1 ready to be filed. So that's the contention in the 2 broadest terms.</p> <p>3 So request for admission number one, you have acted on 4 sexual preference for minor females on multiple occasions 5 over the course of, at least, the last decade. Defining 6 the scope of Mr. Epstein's motive to conceal his misconduct 7 both in terms of restricting his civil liability and his 8 punitive damage exposure, I suggest to Your Honor is, at 9 least, reasonably calculated to lead to admissible 10 evidence.</p> <p>11 Two, you have engaged in sexual activity with more 12 than forty minor girls between 2002 and 2006 in your 13 residence in West Palm Beach, Florida. Which is where 14 Mr. Edwards' clients were assaulted.</p> <p>15 Three, among the minor females with whom you have 16 engaged in sexual activity between 2002 and 2006 was a 17 person identified in a civil lawsuit filed against you as, 18 and those are the identifications of Mr. Edwards' three 19 clients.</p> <p>20 So, clearly, an acknowledgment from Mr. Epstein that 21 he, in fact, engaged in sexual activity with these minor 22 clients is relevant and material to what we contend is the 23 motive.</p> <p>24 Now, if Your Honor may recall, we understand that 25 there is very likely to be a Fifth Amendment privilege</p>
<p>Page 75</p> <p>1 THE COURT: Let me read the ones again that we're 2 talking about because I didn't have them right here in 3 front of me, the requests themselves.</p> <p>4 MR. SCAROLA: My suggestion is that you start 5 with the counterclaim itself because you'll understand 6 their relevance more if you understand the counterclaim 7 first.</p> <p>8 THE COURT: I read that this morning but let me 9 go back and read this again.</p> <p>10 MR. SCAROLA: I would just call your attention 11 particularly to the allegations in Paragraph Five and Nine. 12 If you look at those first and then we go to the discovery, 13 I think it's hard to draw the conclusion that this is not 14 reasonably calculated to lead to discovery of admissible 15 evidence.</p> <p>16 THE COURT: Go ahead. I'm listening.</p> <p>17 MR. SCAROLA: All right, sir. Basically, what 18 this complaint says is that Mr. Epstein has engaged in an 19 extensive course of conduct that subjected him to civil 20 liability, both with regard to then pending cases and 21 potential additional cases, as well. And what he tried to 22 do, and continues to try to do in suing Mr. Edwards, is not 23 to assert a legitimate claim but to make an example of 24 Mr. Edwards to deter Mr. Edwards and others from suing him 25 for the legitimate claims that exist that are out there</p>	<p>Page 77</p> <p>1 asserted with regard to each of these requests for 2 admissions. But that's not the determination that Your 3 Honor is making right now. You're not determining whether 4 Mr. Epstein can or cannot reasonably assert a Fifth 5 Amendment privilege. You're determining whether this 6 discovery is reasonably calculated to lead to admissible 7 evidence to the claim, the counterclaim that we have 8 brought against him. I'm quite frankly very puzzled as to 9 how you could arrive at the conclusion that it is not when 10 it's these cases we are alleging that he was attempting 11 through this spurious lawsuit to avoid liability on. 12 All of these cases remained pending at the time that he 13 sued Mr. Edwards.</p> <p>14 The next question, again, relates to these same 15 allegations with regard to these three clients of 16 Mr. Edwards.</p> <p>17 Number five, talks about his having reason to believe 18 that they were minors at the time.</p> <p>19 Number six goes directly to the evidence in the 20 underlying claims. And each of these are clearly 21 calculated to lead to the discovery of admissible evidence 22 regardless of what standard may be applied. What 23 reasonable standard may be applied in terms of the scope of 24 appropriate discovery.</p> <p>25 Now, if Mr. Epstein asserts a Fifth Amendment</p>

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<p>1 privilege with regard to these requests, we're entitled in 2 a civil case to draw inferences from that so we're entitled 3 to know whether he's going to assert his Fifth Amendment 4 privilege or not.</p> <p>5 And they also continue to have bearing as long as some 6 affirmative relief is being asserted against Mr. Edwards 7 but because that pleading remains undefined I need to focus 8 exclusively right now on our pending counterclaim.</p> <p>9 Each of these, and I don't know that I need to go 10 through them because the argument is the same with regard 11 to each of the request for admissions. They are all along 12 the same lines. I suggest that Your Honor simply made a 13 mistake when you denied that discovery.</p> <p>14 The interrogatories are in some respects even more 15 puzzling. The first question is what is the full name and 16 Florida address of the person answering these 17 interrogatories?</p> <p>18 THE COURT: Hang on. Let me get to that.</p> <p>19 MR. SCAROLA: I'm sorry.</p> <p>20 THE COURT: Where is my order on that?</p> <p>21 MR. ACKERMAN: Your Honor, just to make things a 22 little bit easier. You sustained the objection to 23 interrogatory number one. And I don't have an explanation 24 but that's not an objection to be raised.</p> <p>25 THE COURT: Which interrogatory are we talking</p>	<p>1 number three. As is number four. Ghislaine Maxwell is a 2 woman who is alleged to have been a procurer for 3 Mr. Epstein who engaged in sexual conduct with the same 4 minor girls that Mr. Epstein was abusing. She was a 5 participant in his illegal conduct.</p> <p>6 Number five had to do with the damages that were being 7 claimed. And, again, I can understand how we couldn't 8 address that one until we know what the damages are that 9 are being claimed now.</p> <p>10 Number six has to do with engaging in sexual 11 activities with minors again.</p> <p>12 Number seven, Your Honor has sustained on the basis of 13 attorney-client privilege and I think that Your Honor was 14 confused. Because William Scherer and the Conrad, Scherer 15 Law Firm, were not lawyers who ever represented 16 Mr. Epstein. Mr. Scherer and the Conrad, Scherer Law Firm 17 are attorneys who represented, and continue to represent, 18 Ponzi scheme victims. They have interests adverse to the 19 interests of Mr. Epstein. And it is our understanding that 20 information was provided by Mr. Epstein to the Conrad, 21 Scherer Firm and to William Scherer. We would like to know 22 what information they gave them that relates to these cases 23 and I don't know how that, that falls within an 24 attorney-client privilege.</p> <p>25 You deferred as to number eight and I'm not sure why</p>
<p>Page 79</p> <p>1 about because there is an interrogatory at the end of 2 these?</p> <p>3 MR. ACKERMAN: The ones that we're talking about 4 are two, three, four, five, six, nine, seven.</p> <p>5 THE COURT: Hang on, hang on. Where is the 6 order? I'm trying to find the order on that.</p> <p>7 MR. ACKERMAN: It's in there. Three B.</p> <p>8 THE COURT: Okay. I'm sorry.</p> <p>9 MR. SCAROLA: No, it's not, it's not tab Three B. 10 It's --</p> <p>11 THE COURT: I've got the order.</p> <p>12 MR. SCAROLA: Okay.</p> <p>13 MR. ACKERMAN: I'm sorry. Three A.</p> <p>14 THE COURT: Yeah. I see where I did one, two, 15 three, four, five, six, nine.</p> <p>16 MR. SCAROLA: You deferred as to eight.</p> <p>17 THE COURT: And seven on attorney-client 18 privilege.</p> <p>19 MR. SCAROLA: And seven on attorney-client 20 privilege. So I'm not sure what Your Honor was looking at 21 but I don't see how you can sustain the objection to number 22 one under any circumstances.</p> <p>23 THE COURT: Actually, nor do I.</p> <p>24 MR. SCAROLA: And number two, number two is going 25 to the same issues as the request for admissions. As is</p>	<p>Page 81</p> <p>1 that was deferred but I think that, certainly, is 2 information to which we're currently entitled. As is 3 number nine.</p> <p>4 So I would ask the Court to take a look at these 5 again. I think somehow there was some confusion on the 6 Court's part. Perhaps Your Honor was focusing on the 7 complaint and not discovery relevant and material to the 8 counterclaim. If you focus on the allegations in the 9 counterclaim I think it's very apparent that this is 10 information we're entitled to have. Thank you, sir.</p> <p>11 THE COURT: Thank you. Yes, sir.</p> <p>12 MR. ACKERMAN: Okay. Your Honor, I would like to 13 start off by saying that we had a lengthy argument about 14 all of these issues, with the exception of number one, 15 which I don't honestly have an explanation for. But we 16 went through a lengthy argument about all of these issues 17 and one of the concerns that came up at that time was that 18 the Court was asking us whether or not, based on the 19 complaint, that these matters were going to be at issue. 20 We filed an amended pleading where we took these issues, to 21 the extent that they were remotely relevant in the first 22 complaint, out.</p> <p>23 Even if you look at the amended complaint, there is 24 nothing there that puts these matters that he has asked 25 with this type of particularity in issue.</p>

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<p>1 MR. SCAROLA: Excuse me, Your Honor. I conceded 2 that. We're not talking about discovery relating to the 3 complaint.</p> <p>4 THE COURT: I'm sure he's going somewhere with 5 this, I suspect, so I'm going to let him go.</p> <p>6 MR. SCAROLA: Okay.</p> <p>7 MR. ACKERMAN: All right. Mr. Scarola argued at 8 that time his counterclaim issues, okay. And the Court 9 entered its ruling and the motion for reconsideration came 10 before this Court solely on the basis of Alvarez, okay. 11 That's the only reason the Court granted this rehearing. 12 And my first argument is is that if the Court is not going 13 to consider Alvarez as the grounds, this is done.</p> <p>14 THE COURT: Well, any ruling, let me just say up 15 front, any ruling on the discovery matters, interlocutory 16 orders I can reconsider any time for any reason. The issue 17 that I want to find the time to go to today is whether or 18 not these are, in fact, calculated to lead to admissible 19 evidence in this case. So deal with that issue because I, 20 quite frankly, it's been awhile since you argued that issue 21 and I made my ruling.</p> <p>22 MR. ACKERMAN: We objected, first of all, that 23 the scopes are burden -- the scopes are extremely large. 24 Mr. Scarola's counterclaim, which he's relying on, is an 25 abuse of process claim. His abuse of process claim is</p>	<p>1 limitations of what he has to prove in his counterclaim for 2 abuse of process, nothing here remotely leads to any 3 discoverable evidence and that's why the Court denied it to 4 begin with. Engaged in sexual activity. So we're going to 5 have to invade all of these collateral matters. These will 6 take the Court, one of the arguments I made last time, on 7 a side trip that will take forever. We're not here, this 8 case is not here to litigate those matters. Our case and 9 Mr. Scarola's response are related to what the law firm did 10 with investors relating to the Epstein cases and how the 11 judicial system was perverted for a Ponzi scheme.</p> <p>12 Mr. Scarola's response is, well, we're going to bring 13 an abuse of process claim and, frankly, I know we're not 14 here necessarily to re-argue it and the Court ruled in a 15 prior order that it was an abuse of process claim. But if 16 you look at it there is elements of defamation. There is 17 other elements of other cases. So I think before you reach 18 any issue with regard to whether these matters, he is going 19 to have to be required to replead his counterclaim with the 20 same particularity that you're requiring us to see how 21 sexual activity with all of these minor girls are going to 22 relate to an abuse of process claim. Okay.</p> <p>23 Secondly, number three, he wants to know who he had 24 specific sexual activity with. That's not going to bear on 25 an abuse of process claim. Okay. He can make generally</p>
<p>Page 83</p> <p>1 directed at Mr. Epstein for this lawsuit. He, therefore, 2 has not done so in his counterclaim, needs to particularly 3 allege what process, what acts of the judicial system were 4 abused in this case as he has argued to this Court. And 5 that needs to be done before we undertake this broad, 6 extensive discovery.</p> <p>7 Now, we have objected on the grounds of the Fifth 8 Amendment. And we have argued before on the sword and 9 shield and I need to say something about it at this point. 10 The issues that involve -- and the Court overruled them 11 when it came to the motion for summary judgment. 12 The sword and shield issues come on these lines. When a 13 plaintiff makes a claim and then claims privilege on 14 matters related to the case, then Mr. Scarola may have 15 a point. But nothing in this case, and he has not 16 particularly alleged why this case and the actions in this 17 case that have been taken by Mr. Epstein's counsel as abuse 18 of process raised these issues. Mr. Scarola has -- and, 19 therefore, the sword -- and this was briefed in the 20 response, our response to the motion for summary judgment. 21 It was extensively briefed on the sword and shield doctrine 22 and so I'm just going to direct the Court to that.</p> <p>23 But in this case we have, he has asked about sexual 24 preferences, sexual activities. The scope of this is 25 extremely broad. It's extremely harassing. And given the</p>	<p>Page 85</p> <p>1 the allegation that maybe Mr. Epstein filed this lawsuit to 2 harass Brad Edwards but this is not where it's going to go. 3 Okay. We don't have to get into the number of minor 4 females that he paid for. We don't have to get into all of 5 these specific dates. We don't have to get into the names 6 of this. And this relates to the motion that we have later 7 on relating to pre-trial publicity. Because this stuff 8 gets filed in this Court and the next thing we know it's in 9 the newspapers or the Internet. And the Court, if this 10 discovery proceeds, is going to be in a position of having 11 to deal with those issues that may potentially taint the 12 jury pool. So at this point they really have no relevance, 13 okay.</p> <p>14 He's asked for socializing minor females in the 15 presence of these people. There is no charge, there is no 16 allegation that supports this. And an abuse of process 17 claim that he has pled, as it presently exists, including 18 transporting these and acts of trafficking minors, are 19 going to take us on a side trip. Now, with regards to -- 20 that's pretty much related to the requests for admissions.</p> <p>21 Most of the interrogatories fall under the same 22 category. We did raise Fifth Amendment objections there. 23 They are not related to pursuing whether his genitals were 24 exposed. Whether they were clothed in underwear have 25 nothing to do with the claim that we're proceeding with.</p>

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<p>1 They cannot possibly lead to relevant evidence relating to 2 this. All it will do is be burdensome, harassing and 3 wasting the Court's time dealing with this.</p> <p>4 The same thing with number three whether your genitals 5 were exposed. What was the number of times this lady, 6 Maxwell, engaged in activity with minor females? What does 7 that have to do with an abuse of process claim? This is 8 merely done for the purpose of harassment and has nothing 9 to do with the claims that are being brought, which is why, 10 I believe, the Court ruled in this matter. Here he wants 11 to know, number six in the interrogatories, with regard to 12 the last time you engaged in sexual activity with a minor 13 state the following. We don't need to get into that. This 14 Court doesn't need to spend its time on that. There is 15 nothing remotely related to this abuse of process claim 16 that's going to make that relevant.</p> <p>17 The same thing with L.M. in number eight --</p> <p>18 THE COURT: Let me just ask you, his argument is, 19 essentially, that the purpose of the abuse of process here 20 is to cover up these alleged conduct. Or to prevent 21 exposure of this alleged conduct by Mr. Edwards and others 22 like him. How do you respond to that? If it goes to the 23 motive of filing or abusing the process, how is that not -- 24 if that's true -- how is that not --</p> <p>25 MR. ACKERMAN: Well, first of all, Your Honor,</p>	<p>1 one -- if the element of the abuse of process is that they 2 took a pending case and abused the system to put some 3 extortion on someone else, they got to establish that. To 4 extort or put pressure on Mr. Edwards he has to establish 5 that first before we go into all of these other matters. 6 Because if the process was legitimately used, it doesn't 7 matter what the motive is.</p> <p>8 THE COURT: Well, I thought that abuse of 9 process, the whole theory of abuse of process was being 10 used for purpose unrelated to the process itself, i.e. to 11 cover up misdeeds or whatever the reason may be. At least, 12 the allegation. That is the reason or, at least, that's 13 their argument.</p> <p>14 MR. ACKERMAN: Your Honor --</p> <p>15 THE COURT: I'm just asking. I'm not ruling. 16 I'm asking questions here. So just, you know, he says the 17 reason that it's relevant is because the process is being 18 abused for the purpose. The reason it's being abused is 19 to, the ulterior motive is to cover up and otherwise 20 prevent the exposure of your client to these other 21 allegations by Mr. Edwards or others like him that may be 22 scared off or afraid to pursue it because of what he's 23 doing right now. At least, that's his argument.</p> <p>24 MR. ACKERMAN: Your Honor, based on what he's 25 asking --</p>
<p>Page 87</p> <p>1 Mr. Epstein pled guilty, okay. There was an overall 2 settlement that dealt with a numerous number of victims as 3 part of that, okay. He served time. He was on probation, 4 okay. He entered into a non-prosecution agreement and 5 whether they are happy with what the government did or not 6 is really irrelevant. So how do you get to the point where 7 he wants to cover up all of this when the government has 8 concluded the investigation. They've agreed --</p> <p>9 THE COURT: I guess it's the same reason your 10 client pled the Fifth Amendment. I presume your concern, 11 or not maybe concern, that doesn't protect him. I mean, I 12 mean, that's a logical answer. I don't know what happened 13 here. I'm just, I'm asking you to respond to his argument, 14 which is, look, if the abuse of process here is misuse of 15 the judicial system to silence Mr. Edwards and others like 16 him from pursuing claims against your client for sexual 17 activities with minor females or other sexual misconduct, 18 if that's his motive for doing it, how is it not relevant 19 that he's engaged in that conduct?</p> <p>20 MR. ACKERMAN: Because the abuse of process claim 21 does not require the proof of motive. Okay. The abuse -- 22 if you file --</p> <p>23 THE COURT: It's not whether it requires proof of 24 it. Whether it's relevant to the cause of action.</p> <p>25 MR. ACKERMAN: Well, if one of the elements isn't</p>	<p>Page 89</p> <p>1 THE COURT: Uh-huh.</p> <p>2 MR. ACKERMAN: -- you don't need to ask him this 3 way.</p> <p>4 THE COURT: Uh-huh.</p> <p>5 MR. ACKERMAN: We don't need to go through and, 6 for example, get healthcare provider records for sexual 7 disorder. There is no issue there. We don't need to go 8 through, in other words, what is the name and last known 9 address of every healthcare provider which you have been 10 treated or evaluated for sexual disorder. We haven't 11 placed that in issue. Okay. We don't need, and he doesn't 12 need to be able, if the Court is correct, and to follow the 13 Court's question, we don't need to know the date of every 14 single one of the actions. We don't need to show in detail 15 what he's asking about genitals. We don't need to know the 16 number of sexual matters that were involved with 17 Mr. Epstein to do that. He can introduce that by talking 18 about what, you know, what he's pled guilty to. But this 19 is such a broad request we have asserted a Fifth Amendment 20 privilege on it and he is making this argument in defense. 21 I mean, we were making that in defense of a counterclaim.</p> <p>22 THE COURT: I'm sorry. I'm not ruling on the 23 Fifth Amendment privilege. I'm ruling on whether or not 24 these are relevant to the lawsuit and not whether your 25 client has the Fifth Amendment privilege.</p>

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<p>1 MR. ACKERMAN: That's part of our objections 2 right now.</p> <p>3 MR. SCAROLA: Which I am not asking be overruled.</p> <p>4 THE COURT: I didn't understand it to be that 5 way. I understood it to be the question that was in front 6 of me. Your client can always say I object on the basis 7 but he has to specifically answer the question that way. 8 But the question was, that I thought we were discussing, 9 was whether or not he can be required to even give that 10 answer because if it's not relevant or calculated to lead 11 to admissible evidence, he doesn't have to give any answer 12 period.</p> <p>13 MR. ACKERMAN: Your Honor, I just want to put on 14 the record that we've raised the Fifth Amendment.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. ACKERMAN: Secondly, this is not calculated 17 to lead to any relevant evidence. It is calculated to get 18 harassing information that is over broad and has nothing to 19 do with, given this type of detail, with what he claims he 20 wants to prove, okay. The Court can certainly restrict 21 what he's asking. That's one of our objections. It's over 22 broad. It's harassing. It's very, very personal in terms 23 of doing it, okay. It certainly should be limited in time. 24 There is no effort here at all to limit the time. If the 25 Court -- he doesn't need to answer questions about his</p>	<p>1 relevant and material. And while motive is generally not 2 an element of a tort in an abuse of process claim where we 3 are obliged to show that the purpose behind the filing of 4 the complaint against Mr. Edwards, which is the process 5 that is clearly addressed in this counterclaim, the purpose 6 was unrelated to any legitimate purpose and was intended to 7 cover up an extremely broad pattern of conduct that could 8 subject Mr. Epstein to both additional criminal liability 9 and civil liability.</p> <p>10 It is a very curious argument, indeed, that 11 Mr. Epstein has engaged in so much of this criminal and 12 tortious conduct that it would create an enormous burden 13 for him to answer the interrogatories about how many young 14 women he has abused. If that's the argument that is being 15 made, and it sounds like that's the argument that's being 16 made, they have the burden of supporting that 17 burdensomeness argument. But there is no way that the 18 Court could ever conclude that you have engaged in so much 19 misconduct that I'm not going to ask you to tell us how 20 much because it would be too much of a burden on you.</p> <p>21 THE COURT: I didn't understand you to say that. 22 I thought you were saying it was over broad, not 23 burdensome. It's a different standard.</p> <p>24 MR. SCAROLA: Well, the word burdensome was 25 spoken many times and it was related to the scope of what</p>
<p>Page 91</p> <p>1 genitals when they were exposed, okay. If the 2 interrogatory is rephrased so that it states that were you 3 subject to a number of victims' claims, if so, how many, he 4 can establish that, okay. But to go through and ask when 5 Maxwell engaged in sexual activity with a minor female, 6 what does that have to do with Mr. Epstein? Okay. 7 That's someone else. Okay. And whether he did these overt 8 sexual acts that are the subject of this request, that's 9 really the heart of the objection. I think, I still 10 contend it's not relevant based on what is there but, 11 certainly, if the Court is going to find that he wants to 12 prove motive, this isn't the way to do it. We're going to 13 have evidentiary issues with it. The Court has discretion 14 in discovery matters to limit it so as not to waste the 15 Court's time with unnecessary litigation. And at a 16 minimum, I still believe the Court needs to wait until 17 Cooper is involved, but at a minimum the Court should 18 sustain these objections and make him reask them so that 19 they are not, they're limited in time. They're limited in 20 not so much detail. And that they are calculated to show 21 why it's related to the claims in this lawsuit and these 22 don't meet that requirement.</p> <p>23 THE COURT: Okay. Briefly, Mr. Scarola.</p> <p>24 MR. SCAROLA: Your Honor is correct that motive, 25 while generally not an element of a tort, is always</p>	<p>Page 93</p> <p>1 was being requested and how many incidents would need to be 2 disclosed. As far as the scope is concerned where this 3 conduct took place, when it took place, the extent to which 4 it is going to expose Mr. Epstein to potential criminal and 5 civil liability is all relevant and material. There's 6 nothing overly burdensome about this at all.</p> <p>7 MR. ACKERMAN: The burdensome part of it was the 8 detour that this Court would go on, if we go down that 9 path.</p> <p>10 THE COURT: Okay. I've heard enough argument on 11 that. I'm not going to rule right off the top of my head 12 here. You'll get an order by the end of the week. I got 13 to think about this. Whichever way I go it's kind of like, 14 in a sense, a roadmap of where we're going in the future so 15 I really have to think about that more. What would be the 16 next one here we have to deal with, guys? I mean, I got a 17 pretty good idea what I'm going to do but I want to think 18 about it overnight before I put it on paper.</p> <p>19 MR. SCAROLA: Your Honor, the next has to do with 20 our motion for protective order and objections to a notice 21 of taking deposition and appointment of special master in 22 an effort to re-depose Mr. Edwards.</p> <p>23 MR. ACKERMAN: No, that's not the one.</p> <p>24 THE COURT: I'm sorry.</p> <p>25 MR. ACKERMAN: I don't believe that's the next</p>

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<p>1 one.</p> <p>2 MR. SCAROLA: Three B.</p> <p>3 MR. ACKERMAN: The next one is Three B and Three</p> <p>4 C. Motion for protective order relating to a subpoena that</p> <p>5 we sent to the trustee seeking the law enforcement</p> <p>6 documents.</p> <p>7 MR. SCAROLA: Oh, I'm sorry.</p> <p>8 THE COURT: So Three B.</p> <p>9 MR. ACKERMAN: Three B.</p> <p>10 THE COURT: Let's me pull that. Let's take about</p> <p>11 a five minute recess. I've got something I need to take</p> <p>12 care of real quick.</p> <p>13 (BREAK TAKEN)</p> <p>14 MR. SCAROLA: Your Honor, an issue has arisen</p> <p>15 during the recess that the court reporter would like some</p> <p>16 guidance on. One of the reporters has requested the</p> <p>17 transcription of this hearing and to receive a copy and the</p> <p>18 court reporter wants the Court's guidance as to whether she</p> <p>19 can accept an order from someone other than a party in the</p> <p>20 case.</p> <p>21 MR. ACKERMAN: Your Honor, I would ask that you</p> <p>22 defer that until we get to the motion relating to</p> <p>23 prejudicial statements that we're asking the Court to enter</p> <p>24 some restrictions on because of the use that has been made</p> <p>25 of statements in this case that show up in the press that</p>	<p>1 MR. ACKERMAN: Well, no, because I wasn't</p> <p>2 prepared to deal with it today. My concern, though, is</p> <p>3 that we have filed -- and this would be, if you want to</p> <p>4 take this up now?</p> <p>5 THE COURT: Well, I guess we better then we can</p> <p>6 go ahead and take it up in order.</p> <p>7 MR. ACKERMAN: Well, this would be sections Three</p> <p>8 E and Three F.</p> <p>9 THE COURT: Okay. This has actually never been</p> <p>10 presented to me for hearing before, right?</p> <p>11 MR. SCAROLA: This is new.</p> <p>12 MR. ACKERMAN: This is new.</p> <p>13 THE COURT: Okay. Give me a second, counsel.</p> <p>14 Okay. Mr. Scarola, you filed a response to this?</p> <p>15 MR. SCAROLA: Yes, sir, that's the next tab F.</p> <p>16 THE COURT: Okay. I'll hear argument. I have to</p> <p>17 tell you, gentlemen, it's been awhile since I've had this</p> <p>18 issue come up. In fact, I think it's only come up once in</p> <p>19 my judicial career but I will listen to argument. I will</p> <p>20 not rule from the bench today. I have to look at these</p> <p>21 cases again. It's been a long time since I read that</p> <p>22 Supreme Court decision but go ahead, Mr. Ackerman.</p> <p>23 MR. ACKERMAN: Yes, sir.</p> <p>24 THE COURT: Okay. And did anybody favor me with</p> <p>25 copies of these cases?</p>
<p>Page 95</p> <p>1 relate to the sexual matters, which we believe aren't</p> <p>2 relevant.</p> <p>3 THE COURT: You are asking me to issue a prior</p> <p>4 restraint order, is that what you're asking me to do?</p> <p>5 MR. ACKERMAN: It's not a prior restraint order.</p> <p>6 THE COURT: Well, what is it you are asking me to</p> <p>7 do?</p> <p>8 MR. ACKERMAN: We're asking you to enter an</p> <p>9 order -- hold on a second.</p> <p>10 MR. KNIGHT: Actually, at this point I think what</p> <p>11 Joe is saying the court reporter issue, if we could take</p> <p>12 that up at the very end because it may relate to some of</p> <p>13 these other issues.</p> <p>14 THE COURT: Let's make sure we get to it. Okay.</p> <p>15 Because -- well, let's deal with it right now. Since it's</p> <p>16 come up let's deal with it and we'll deal with it again, I</p> <p>17 guess, in the order. But this is separate. This is an</p> <p>18 open proceeding. I know of no case law that prevents</p> <p>19 anybody from getting a copy of -- having a court reporter</p> <p>20 type a deposition.</p> <p>21 MR. SCAROLA: That's my understanding, sir.</p> <p>22 THE COURT: I don't know of any. I mean, can't</p> <p>23 somebody come and get a copy of anything that's in open</p> <p>24 court. I don't know, if they're willing to pay for it.</p> <p>25 Do you have any authority for that at all?</p>	<p>Page 97</p> <p>1 MR. SCAROLA: I did not, sir.</p> <p>2 MR. ACKERMAN: I did not, Your Honor. We can</p> <p>3 send them in.</p> <p>4 THE COURT: I can look them up.</p> <p>5 MR. ACKERMAN: One of the things that's been</p> <p>6 occurring in this case, Your Honor, and a perfect example</p> <p>7 of our position on it is the summary judgment documents.</p> <p>8 Everything that Mr. Scarola and Mr. Edwards can do to raise</p> <p>9 the issues of these sexual improprieties to insert in this</p> <p>10 case, the Court can see that they are doing. Okay. Once</p> <p>11 they file the stuff in the Court file it is then under the</p> <p>12 law and under the bar rules able to be commented on. So as</p> <p>13 a result, we've attached to the first motion and then the</p> <p>14 amended motion these articles where Mr. Scarola is being</p> <p>15 attributed to saying that he's a convicted pedophile.</p> <p>16 That's not true. Okay. One of the things I want to</p> <p>17 address in this motion is up until today Mr. Scarola has</p> <p>18 constantly referred to Mr. Epstein as a pedophile.</p> <p>19 Okay. And there has been no proof of that anywhere. And</p> <p>20 it's inappropriate to do it in a Court proceeding and for</p> <p>21 it to be quoted in this manner because it will taint the</p> <p>22 jury pool. And also has no bearing on what the issues are.</p> <p>23 Mr. Scarola is quoted in other areas about speaking to</p> <p>24 Prince Andrew. There is an address book. All of these</p> <p>25 will become issues in this case if this door gets opened.</p>

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1 There is articles where Mr. Scarola says they're
 2 trying to get a statement from Prince Andrew. And it's our
 3 view that these were published comments by Mr. Scarola
 4 that's clearly trying to generate articles about
 5 Mr. Epstein and that is not the place to try this case.

6 The Court does have discretion under the Miami Herald
 7 Publishing McIntosh case to take control and prohibit
 8 extratritial commentary in order to ensure the party
 9 receives a fair trial. And you can take steps to protect
 10 against pre-trial publicity, as the Shepherd Maxwell case
 11 discussed. The limitations imposed by the Court on
 12 communications between the lawyers and/or litigants and the
 13 media are permissible for good cause in order to assure a
 14 fair trial. McIntosh case specifically states that
 15 limitations placed on lawyers, litigants, and officials
 16 directly affected by Court proceedings may be at the
 17 Court's discretion. Muzzling lawyers who may wish to make
 18 public statements has been long recognized it's within the
 19 Court's inherent power to control professional conduct.

20 There is also a bar canon, 114-3.6 of the rules
 21 regulating the Florida Bar, called trial publicity. It
 22 talks about a lawyer shall not make an extratritial
 23 statement that a reasonable person would expect to be
 24 disseminated by means of public communication, if the
 25 lawyer knows or reasonably should know, that it will have a

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1 prejudicial likelihood on material prejudicing an
 2 adjudicated proceeding due to its creation of an eminent
 3 and substantial detriment on that proceeding. This rule
 4 incorporates the substantial likelihood of material
 5 prejudice standard that the Supreme Court adopted.

6 And what's occurred, and the Court can look at the
 7 docket sheet. I don't think I have it attached here. But
 8 there was a recent filing that Mr. Scarola made that he
 9 used in support of his punitive damages about an interview
 10 with another alleged victim. He files it in the Court file
 11 and then there is an article about it. That has also been
 12 the case with some of these other articles. We have in the
 13 amended motion, the article is Epstein Claim To Intimidate
 14 Attorney Edwards Prosecuting Sex Abuse Cases. He's being
 15 quoted here. Okay. Then there is another article in the
 16 Daily News, Jeffrey Epstein Introduced Woman to Prince
 17 Andrew. That's being quoted. Mr. Edwards is quoted. Then
 18 there is a marketing firm that Edwards, Mr. Edwards' law
 19 firm used where he states Mr. Edwards has successfully
 20 represented ten women between twelve and fifteen years old
 21 by proving that Mr. Epstein and his intentional sex
 22 trafficking criminal enterprise exploited these girls.
 23 There is simply no basis in fact for this, at least, based
 24 on the knowledge we have of the number of cases
 25 Mr. Edwards has handled.

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1 We have a British publication called the Telegraph
 2 that's published convicted pedophile. Well, he hasn't been
 3 convicted as a pedophile. Okay. Much of the information
 4 is from Mr. Scarola and he's quoted in the article that
 5 we've attached and we put forth some of what he said. He
 6 wants to speak to Prince Andrew. They want to obtain
 7 additional details. We believe Prince Andrew has been in
 8 the company of Mr. Epstein. And then we talk about The
 9 Holy Grail that was reprinted.

10 Then there is another British publication called the
 11 Observer, which Mr. Scarola is again quoted. We have
 12 another article published in the Independant discussing the
 13 same thing.

14 And we've got the Farmer Firm on their web site
 15 issuing press releases and online articles referring to
 16 Mr. Epstein and the lawsuits. And they refer to him on the
 17 web site as the billionaire pedophile and he helped ten
 18 women seek justice. Okay.

19 We don't believe it's appropriate to wage a media
 20 campaign, taint the jury pool and pre-try this case in the
 21 court of world opinion, particularly given the Internet.
 22 Okay.

23 This is one of the reasons why I believe the Court
 24 should deny the earlier request that we spoke about with
 25 regard to the discovery on these specific sexual matters

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1 because they will then be in the press. And that will be,
 2 then we will be faced with real issues about a fair trial.
 3 The Court can place these limitations --

4 THE COURT: Help me out here. The McIntosh case,
 5 I read this and there has been some Supreme Court cases
 6 since that decision, as I understand, that tell me what the
 7 threshold or what the standard is that I have to apply
 8 before I do that. I know I have the authority to do that.
 9 I, certainly, have the discretion to do that but there's a
 10 standard set forth in these cases, as I recall it, that
 11 tells me what you, you or the person actually seeking this
 12 restraint, is required to establish before, before I go
 13 down there. So what is it, what do the cases tell me on
 14 that?

15 MR. ACKERMAN: The Court -- we have proposed what
 16 the Court can do. It says that no person covered by this
 17 order --

18 THE COURT: No, no. You misunderstand me. Let
 19 me ask the question again. I'm not asking you what you
 20 want me to do in terms of restraint. What I'm asking you
 21 is what is the threshold of the bar you have to reach in
 22 order to get such a restraint? As I understood it, if I
 23 recall right, the McIntosh case sets forth a standard that
 24 I have to utilize before I, I use my discretion by entering
 25 such an order. It's been awhile.

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<p>1 MR. SCAROLA: That standard is described in our 2 memo, Your Honor. It's quoted at page three, the top of 3 page three in our memo.</p> <p>4 THE COURT: And your memo is at?</p> <p>5 MR. SCAROLA: That's tab F. Comes right after 6 their memo.</p> <p>7 MR. ACKERMAN: Hold on. To justify a prior 8 restraint the activity must pose a clear and present danger 9 or serious or eminent threat to a protecting competing 10 interest and that such a restraint cannot be upheld or -- 11 cannot be upheld if reasonable alternatives are available 12 and that's what McIntosh says.</p> <p>13 MR. SCAROLA: That's a direct quote from 14 McIntosh, Your Honor, that's correct.</p> <p>15 MR. ACKERMAN: But the Court also -- and that 16 talks about pre-trial proceedings. Okay. This can go on 17 between now and the time we go to Court, as long as we are 18 discussing these issues. And by the time we get to trial, 19 you know, and the issue I think the Court is concerned 20 about is eminency. But we have a history right now that's 21 been established. If the Court allows this discovery to 22 proceed that we've previously argued and does not place -- 23 and the case law says that a Court -- prohibition on 24 comment is an acceptable alternative to prior restraint, 25 which is cited in the Florida Freedom Newspapers versus</p>	<p>1 unnecessary amount of pre-trial publicity on issues that 2 may not, and the Court may ultimately rule on, have nothing 3 to do with this case. Okay. You are not there yet on that 4 decision, okay, on what the ultimate issues are. And until 5 that occurs, the lawyers shouldn't be making any comments 6 to the press about sexual conduct claims involving 7 Mr. Epstein with the specificity Mr. Scarola has been 8 saying.</p> <p>9 What we're proposing is that is contained on page 10 eight and nine of the amended motion. That basically 11 states that no person covered by this order shall make no 12 statement to the media that could interfere with a fair 13 trial. Notwithstanding that, the Court --</p> <p>14 THE COURT: What page are you on?</p> <p>15 MR. ACKERMAN: I'm on page eight and nine of our 16 amended motion.</p> <p>17 THE COURT: Does this come out of a case?</p> <p>18 MR. ACKERMAN: Yes.</p> <p>19 THE COURT: What case? Because I wouldn't know 20 what in the world that could interfere with a fair trial or 21 otherwise prejudice the parties in administration of 22 justice means. That's kind of vague. You have a case that 23 that came out of?</p> <p>24 MR. ACKERMAN: Yeah, I do, Your Honor. I have to 25 locate it. I believe I have it. Your Honor, I don't have</p>
<p>Page 103</p> <p>1 McCrary case, which is a Florida -- I'm sorry. Yeah, 2 Florida Supreme Court case 520 So.2nd 32. And it can 3 outline, the Court has also outlined other measures short 4 of prior restraint on publication. Okay. And that has 5 been held to be an appropriate way of doing it. And what 6 the Court can do, and what we're proposing to do, is enter 7 some pre-trial order that before any comments are made or 8 anything is filed relating of a sexual nature, the Court 9 review it and impose limitations on counsel before they 10 comment to the press. These matters are on the Internet 11 and there is really no way to deal with it.</p> <p>12 THE COURT: The order I enter isn't going to 13 protect the Internet anyway.</p> <p>14 MR. ACKERMAN: You can't stop the Internet. What 15 you can do is stop us, stop the lawyers from talking to 16 reporters about stuff before it gets filed in the Court 17 file. For example, Mr. Scarola recently filed an interview 18 of a woman that was an alleged victim of Mr. Epstein's 19 actions. He filed that with a pleading that said this is 20 being filed in support of some motion, followed by an 21 article in the paper. Okay. That's what we're asking the 22 Court to exercise some control over. The case law, as I 23 understand it, states that once it's in the public record 24 the lawyers are allowed to comment on it. But what we're 25 trying to do is prevent that so that we don't have an</p>	<p>Page 105</p> <p>1 a copy of it. I'll have to get it to you. I thought I had 2 it with me.</p> <p>3 THE COURT: Okay. Go ahead.</p> <p>4 MR. ACKERMAN: But these cases do allow the Court 5 to make a balancing test between free expression and a fair 6 trial. And in this case, I don't -- we're asking for some 7 protection because if we end up, for example, doing a video 8 deposition --</p> <p>9 THE COURT: There is a distinction between asking 10 for protection against publicity or statements being made 11 and asking for protection in regard to the integrity of a 12 fair trial. Those are two different things. You 13 understand what I'm saying? The mere fact that somebody 14 says something that your client finds offensive or doesn't 15 like or feels that he's been invaded by that comment is not 16 the same thing as my concern, which is, which is that there 17 is a fair trial in this case and can your client get a fair 18 trial with pre-trial publicity. You see what I'm getting 19 at? Because you seem to be focusing most on, you know, 20 this thing affects your client, are, you know, libel or 21 slander.</p> <p>22 MR. ACKERMAN: No, no, that's not the issue, Your 23 Honor.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. ACKERMAN: Here's the thing --</p>

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<p>1 THE COURT: Because I don't have any evidence in 2 front me at this point that whatever pre-trial publicity 3 has gone on or been said or whatever has been said or done, 4 and I don't know what all has been done, has in any way 5 affected our ability to sit six jurors in this particular 6 case that don't know anything about this case and otherwise 7 are able to render a fair verdict.</p> <p>8 MR. ACKERMAN: Here's what I ask the Court to 9 consider.</p> <p>10 THE COURT: Okay.</p> <p>11 MR. ACKERMAN: Okay. Let's hypothetically, and 12 we don't believe the Court should allow this to occur, but 13 hypothetically, let's assume that the Court allows a 14 substantial portion of the discovery that Mr. Scarola was 15 arguing about before, let's assume that that gets in the 16 Court file. Let's assume that Mr. Scarola or Mr. Edwards 17 is allowed to make continual media releases about it 18 between now and the time we have a hearing. Let's assume 19 that in response to some of these discovery requests we 20 will be filing motions under 90.404(b), which relates to 21 other bad acts, to keep that information out because it's 22 merely being introduced to prejudice the jury. The Court 23 will have to conduct a balancing test in terms of whether 24 its proposed relevancy is outweighed by the prejudicial 25 impact. Based on the information that they are seeking,</p>	<p>1 before any further media reports occur that the Court at 2 least instruct the lawyers that there be no more media 3 discussions about the sexual activities until you've ruled 4 on whether they're relevant. And then place some control 5 on what the lawyers say so that by the time we do get to 6 trial the media -- the jury pool is not tainted, which 7 clearly will occur based on the pattern we've seen right 8 now.</p> <p>9 THE COURT: Yes, sir.</p> <p>10 MR. SCAROLA: We have filed an extensive 11 memorandum addressing these issues. It would be 12 unconstitutional for Your Honor to impose any type of gag 13 order on us at this point in time. Particularly 14 considering the fact that this matter has not even yet been 15 set for trial.</p> <p>16 THE COURT: Not even at issue.</p> <p>17 MR. SCAROLA: Not even at issue. We don't even 18 have a complaint filed yet. So the case law is clear that 19 there must be a clear and present danger that a jury pool 20 could be tainted by specific --</p> <p>21 THE COURT: Does that standard apply to gag 22 orders as to the attorneys, as compared to power of 23 restraint of the press or something of that nature?</p> <p>24 MR. SCAROLA: It applies to gag orders with 25 regard to attorneys.</p>
<p>Page 107</p> <p>1 that will be an enormous task. Based on what is likely to 2 occur, if this occurs, there will be numerous media 3 publications continuously now through the case gets tried. 4 Okay. If it's tried. And at that point in time we will 5 then be faced with a potential jury pool that will have had 6 a steady dose of this and I believe that that is wrong to 7 do at this point, particularly, when the Court has not 8 solidified the issues about how extensive this will be. 9 And at that point I think the Court, it is well within the 10 Court's -- the Nebraska Press Association case states that 11 while restrictive orders unquestionably are permissible 12 within certain limits, the U.S. Supreme Court has not made 13 any distinctions between restrictive orders and prior 14 restraints. Instead, Nebraska focuses on balancing free 15 expression against competing interest in a particular 16 context.</p> <p>17 In this case what I'm trying to say is that if my 18 hypothetical proves to be true, then we will be faced with 19 a jury that will be tainted because of all of the 20 publications. And we will -- if this case is limited to 21 abuse of process, and Mr. Scarola can inject this into it, 22 then the jury, in my opinion, and I will argue to the 23 Court, will not be able to set aside any instructions the 24 Court makes relating to 404(b) evidence. We have Fifth 25 Amendment issues that are coming up. And I submit that</p>	<p>Page 109</p> <p>1 THE COURT: Okay.</p> <p>2 MR. SCAROLA: Yes, sir, it does apply to gag 3 orders with regard to attorneys. And the standards that 4 are applicable, I suggest to Your Honor, clearly cannot be 5 met under the present circumstances. And there is a 6 complete and total absence of proof before Your Honor that 7 we have engaged in any conduct whatsoever that could be 8 prohibited under any circumstances.</p> <p>9 We have had the opportunity to appear on national 10 television. We have had the opportunity to conduct 11 extensive press interviews. We have had the opportunity to 12 issue press releases. We have not engaged in any of that 13 conduct. The press has taken a keen interest, 14 particularly, the foreign press has taken a keen interest 15 in this case and there have been a lot of articles that 16 have appeared in the British press ever since a victim of 17 Mr. Epstein's has made public statements that have 18 associated British royalty with Mr. Epstein.</p> <p>19 They have been very interested in what is going on in this 20 case as a consequence of that. And we have had many 21 opportunities to speak to the foreign press about these 22 issues. We have scrupulously limited any response that we 23 have made to contacts initiated by the press to matters 24 that are matters of public record and available to the 25 press by going to the courthouse and reading this Court's</p>

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<p>1 file.</p> <p>2 If Mr. Epstein is embarrassed by Mr. Epstein's</p> <p>3 conduct, that's Mr. Epstein's problem. And, quite frankly,</p> <p>4 I'm pleased to hear that he's embarrassed by his conduct.</p> <p>5 Maybe it will serve some deterrent effect in the future on</p> <p>6 Mr. Epstein. And if this case and what Mr. Edwards has</p> <p>7 been through serves the purpose of increasing Mr. Epstein's</p> <p>8 embarrassment over Mr. Epstein's misconduct, that's great.</p> <p>9 I will tell you that the focus of public attention on</p> <p>10 this case has served the interests of my client because it</p> <p>11 has produced witnesses that we otherwise might not have</p> <p>12 known about. And I welcome further public scrutiny with</p> <p>13 regard to this case for that reason because it will aid,</p> <p>14 ultimately, in the pursuit of justice.</p> <p>15 We object to any restraints. I will tell you that</p> <p>16 once this case is set for trial we will scrupulously avoid</p> <p>17 participation in any public comments with regard to this</p> <p>18 case that could possibly interfere with our ability to</p> <p>19 select a jury because the last thing we want to do is</p> <p>20 interfere with our ability to get justice in this case.</p> <p>21 Thank you, sir.</p> <p>22 MR. ACKERMAN: Your Honor.</p> <p>23 THE COURT: Yes, sir.</p> <p>24 MR. ACKERMAN: Directing your attention to pages</p> <p>25 five and six here is the bar rule and it specifically is</p>	<p>1 MR. ACKERMAN: I don't have the Gentile case.</p> <p>2 THE COURT: You got the cite for me? Oh, is that</p> <p>3 one 501 US 1030. I got that one. I got the McIntosh case.</p> <p>4 MR. ACKERMAN: I have McIntosh and Florida</p> <p>5 Freedom Newspapers I can give you. I've marked them with</p> <p>6 notes.</p> <p>7 THE COURT: I think I can -- do you have any of</p> <p>8 these cases, Mr. Scarola?</p> <p>9 MR. SCAROLA: I don't have the cases themselves,</p> <p>10 your Honor. They are quoted in relevant part extensively</p> <p>11 in our memorandum.</p> <p>12 THE COURT: Let me take a look at these. I'll be</p> <p>13 right back. Okay.</p> <p>14 MR. SCAROLA: Thank you, sir.</p> <p>15 (BREAK TAKEN).</p> <p>16 THE COURT: Okay. And I apologize for taking so</p> <p>17 long. It's been awhile since I've read these decisions,</p> <p>18 quite frankly. And I had an opportunity to read the ones</p> <p>19 you've given me, as well as some that were actually cited</p> <p>20 in some of the decisions cited after the ones you gave me.</p> <p>21 Seems to me in reviewing these cases that Supreme Court of</p> <p>22 Florida, as well as the Supreme Court of the United States,</p> <p>23 made a distinction between the Court's discretion in</p> <p>24 limiting comments by attorneys during or prior to a</p> <p>25 proceeding, as compared to the public's right to knowledge</p>
<p>Page 111</p> <p>1 restricted to a lawyer shall not make extrajudicial</p> <p>2 statements that a reasonable person would expect to be</p> <p>3 disseminated that will have a substantial likelihood of</p> <p>4 materially prejudicing an adjudicative proceeding.</p> <p>5 THE COURT: Let me ask you this question.</p> <p>6 MR. ACKERMAN: And that's incorporated into the</p> <p>7 Gentile case, which you asked about earlier.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. ACKERMAN: And --</p> <p>10 THE COURT: I'm not sure that a Florida bar rule</p> <p>11 provides legal authority for me under the constitution, to</p> <p>12 enter an order. I mean, it may result in sanctions to the</p> <p>13 lawyer.</p> <p>14 MR. ACKERMAN: The bar rule, that's exactly what</p> <p>15 Gentile says.</p> <p>16 THE COURT: Tell you what, guys, I understand</p> <p>17 both sides of the argument here. What I need to do is go</p> <p>18 back and look at the cases. Do you all have them here?</p> <p>19 It's been a long time since I read the cases that --</p> <p>20 MR. ACKERMAN: May we submit them to you?</p> <p>21 THE COURT: No. I want to go back and take</p> <p>22 fifteen or twenty minutes and let me read the cases, make a</p> <p>23 decision. This is something you guys need to know right</p> <p>24 now because it's going to affect also what the court</p> <p>25 reporter does.</p>	<p>Page 113</p> <p>1 of trial proceedings, as guaranteed by the freedom of the</p> <p>2 press in provisions in the United States constitution.</p> <p>3 And, specifically, has held that prohibition on comments</p> <p>4 is, in fact, different from prior restraint. And the press</p> <p>5 has a right to print anything and we can't, or should not,</p> <p>6 restrain that except in the most extreme of circumstances.</p> <p>7 But the comments of counsel can be restrained.</p> <p>8 Having said that, it seems the Supreme Court has</p> <p>9 adopted, Supreme Court of the United States has adopted a</p> <p>10 lesser standard when imposing limitations on comments by</p> <p>11 counsel, as compared to any prior restraint of the press.</p> <p>12 And the standard which is set forth seems to be substantial</p> <p>13 likelihood of material prejudice and the Supreme Court of</p> <p>14 the United States said that is a constitutional permissible</p> <p>15 balance between the First Amendment rights of attorneys and</p> <p>16 the guarantee of a fair trial.</p> <p>17 Having said all of that, at this point I will deny the</p> <p>18 motion simply on the basis that I have no evidence in front</p> <p>19 of me that would establish that that standard, that</p> <p>20 comments by counsel or anything that counsel has said, done</p> <p>21 or would do, would have a substantial effect or substantial</p> <p>22 likelihood of material prejudice to this case at this</p> <p>23 point. I think that is an evidentiary thing that requires</p> <p>24 me to make findings of fact and facts on the case before</p> <p>25 you actually say, before you enter such a gag order you</p>

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<p>1 actually have to make finding of fact that would support it 2 before you can prohibit the comments as an acceptable 3 alternative to any prior restraint. So I'm denying the 4 motion on that basis at this point in time because I just 5 have nothing in front of me other than this one motion and 6 hearsay documents, which are attached at this point in 7 time.</p> <p>8 MR. ACKERMAN: May it be without prejudice, Your 9 Honor?</p> <p>10 THE COURT: Oh, any ruling like this is without 11 prejudice. Okay. But having said there, I would hope 12 counsel, both sides, would understand the necessity for 13 having a fair trial in this case. And one of the comments 14 the Supreme Court made is that one of the reasons that the 15 courts do have some restrictions on the attorneys, aside 16 from them being officers of the Court, is sometimes their 17 statements are taken more authoritatively than others. So, 18 anyway, I'm denying the motion at this point and time.</p> <p>19 Let's talk about, I see nothing in the rules that 20 would prohibit the press of obtaining a copy of this. They 21 can be in here photographing and videoing this entire 22 proceeding, as far as I know, without my permission. 23 Couldn't they?</p> <p>24 MR. KNIGHT: Your Honor, the comment we made to 25 the court reporter before is we haven't ever researched the</p>	<p>1 government officials and law enforcement officers. The 2 objection is to relevancy first. There are ten thousand 3 two hundred and fourteen pages of e-mails exchanged between 4 RRA attorneys and government officials and law enforcement 5 officers. And in light of the fact that there is no 6 pending claim against Mr. Edwards, that discovery certainly 7 couldn't be relevant or material to any pending claim 8 against Mr. Edwards. And in light of the allegations that 9 we have made, there is no reasonable argument that could be 10 made that that discovery is reasonably calculated to lead 11 to admissible evidence with regard to anything having to do 12 with the counterclaim.</p> <p>13 So in the present state of the pleadings no relevancy 14 can be shown to the counterclaim. No claim is pending. 15 The best way for Your Honor to handle this at this point is 16 to grant our motion for protective order and if allegations 17 are made in the primary complaint which arguably could make 18 this discovery relevant, they can re-issue their subpoena 19 and we'll re-address it in the context of whatever 20 allegations are then made. I can't imagine that they are 21 going to make any allegations that could make this 22 information relevant or material.</p> <p>23 The primary concern that we have is that if relevancy 24 generally were determined, we need to review ten thousand 25 two hundred and fourteen pages of e-mails in order to make</p>
<p>Page 115</p> <p>1 issue. She should check with her office.</p> <p>2 THE COURT: I'm not prohibiting it, is what I'm 3 saying.</p> <p>4 MR. KNIGHT: I don't know what their normal 5 standards are and we did not want to comment on it.</p> <p>6 THE COURT: Whatever she wants to do is her 7 choice. I'm not prohibiting the press from obtaining it, 8 if they want to obtain copies of the proceedings, they can 9 obtain it. I'm not entering any such order because it 10 seems to me the cases also said the press is entitled to.</p> <p>11 I also point out that most of these cases were 12 criminal proceedings. I've never seen a civil case where 13 there has been a gag order and, perhaps, there are. But in 14 my twelve years, eleven years on the bench I've never seen 15 one in this courthouse or heard of one but that doesn't 16 mean it's not proper in the right circumstances.</p> <p>17 Okay. Having said that, let's move on. What's next?</p> <p>18 MR. ACKERMAN: Your Honor, that would be Three B 19 and C.</p> <p>20 THE COURT: Three B and C. Okay. Go ahead.</p> <p>21 MR. SCAROLA: Your Honor, this is the defendant's 22 motion for protective order and objections to a notice of 23 deposition duces tecum addressed to the trustee, Herb 24 Stettin, seeking a substantial number of e-mail 25 communications exchanged between RRA attorneys and</p>	<p>Page 117</p> <p>1 determinations as to whether there are appropriate 2 privilege and work-product objections. We don't want to 3 have to do that, so --</p> <p>4 THE COURT: Let the ask you what privilege or 5 work-product objections would exist between a communication 6 between the law firm and third-parties?</p> <p>7 MR. SCAROLA: The common interest privilege that 8 existed between the prosecution of the civil claims and the 9 criminal prosecution that was ongoing with regard to 10 Mr. Epstein. The common interest, the common interest 11 privilege could clearly cover both attorney-client 12 communications and work-product. So there is potential 13 privilege objections that need to be evaluated. There are 14 potential privilege objections that need to be evaluated. 15 But at this point there could be no possible relevancy as 16 to those communications.</p> <p>17 MR. ACKERMAN: Your Honor, I think it's 18 important, first of all, if you have --</p> <p>19 THE COURT: Let me stop. Somebody prepare an 20 order on the, what I just ruled. You don't have to write 21 out all the details but just --</p> <p>22 MR. ACKERMAN: I will. Unless you want to do it?</p> <p>23 MR. SCAROLA: No, that's quite all right.</p> <p>24 THE COURT: All right.</p> <p>25 MR. ACKERMAN: Your Honor, I think it's important</p>

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<p>1 to address this now even though you've dismissed the 2 complaint because for these reasons, and let me show you. 3 If you can take that packet that I gave you, I can 4 demonstrate why this is relevant.</p> <p>5 THE COURT: What packet? 6 MR. ACKERMAN: The packet of the documents that I 7 submitted to you -- 8 THE COURT: Oh, okay. 9 MR. ACKERMAN: -- that Mr. Scarola is looking at. 10 THE COURT: Go ahead. I'm listening. 11 MR. ACKERMAN: Okay. 12 THE COURT: Although, I don't think I can get 13 this thing open, it's sealed. Do you have a letter opener 14 handy? Go ahead. 15 MR. ACKERMAN: Preliminary basis I think it is 16 unfair at this point to stop discovery while we amend the 17 pleading as it relates to this claim. We will be able to 18 prove and allege that Mr. Rothstein ran a Ponzi scheme. 19 The e-mails that I'm going to show you here are e-mails 20 that Mr. Rothstein sent to the investors using the Epstein 21 cases. 22 We have proved in deposition that the Epstein case 23 files that Mr. Edwards was prosecuting were shown to these 24 investors and their counsel. We can establish that the 25 investigators that were working on Mr. Edwards' case</p>	<p>1 force Epstein to settle for a lot of money but we have a 2 couple of issues to deal with.</p> <p>3 The next one, 05087, deals with Qtask and that is here 4 for two reasons. One, is to demonstrate to you why we 5 still need those records down the road. But also to show 6 how Mr. Edwards is using the media to feature the firm and 7 the Epstein case, which we believe was part of the Ponzi 8 scheme. 9 When you go to the next one, 07304, it's an e-mail 10 from Mr. Edwards to Mr. Kassel, who is another lawyer that 11 is representing some of the victims in the crime victims 12 rights act, where they say we have nothing more on moving 13 assets. And that's in the first part. And down below, 14 section three, he says I still think collection is going to 15 ultimately be the key issue and they have lack of proof of 16 transfer of assets. Now, in the federal court proceeding 17 they filed a pre-judgment motion to prevent the transfer 18 of assets, which was denied. And here they are 19 acknowledging potentially their lack of proof of being able 20 to do it. 21 The next one, 00158, is from Mr. Edwards to someone in 22 his firm directing her to send third-party subpoenas for 23 prescription records, which weren't at issue and which we 24 had placed in the complaint. 25 The next one is, 08412, is where Mr. Edwards is saying</p>
<p>Page 119</p> <p>1 against Mr. Epstein were showing the law firm's case files 2 to these investors. We can show, we can make an amendment 3 on the damages that will clear up the issues relating to 4 damages. 5 And I'm going to show the Court now the relevance of 6 why on the overall claims, so the Court doesn't delay the 7 discovery, but, specifically, the relevance with regard to 8 this request and the inability at this point to deal with 9 counsel's argument on a privilege. 10 If you look at, I think it's the first document, 11 01404. Okay. This is an e-mail from Russell Adler to Brad 12 Edwards copying Mr. Nurik and it relates to the 13 non-prosecution agreement, which is in our complaint. 14 Mr. Adler is saying to Mr. Edwards that he had a great 15 conversation with Mr. Nurik, who is another lawyer in the 16 firm, about the agreement and they wanted me to discuss the 17 possibilities. Now, this is an agreement that's already 18 been entered into by Mr. Epstein and the government. 19 Okay. That takes us out of the joint prosecution, joint 20 defense argument that Mr. Scarola made. That also refers to 21 the assets. 22 Okay. We go to the next one, 01661. This is from 23 Mr. Edwards to Mr. Adler dated July 18th, 2009, where 24 Mr. Edwards said to Mr. Adler. I want to talk to you about 25 a few things. If we make the right moves we may be able to</p>	<p>Page 121</p> <p>1 to one of the secretaries requesting a meeting with Scott 2 at some point to discuss Epstein. Now, this is 3 particularly important now, and as I go through because 4 Mr. Edwards has testified in his deposition that he only 5 had a few, he had almost no conversations with 6 Mr. Epstein -- 7 MR. KNIGHT: Mr. Rothstein. 8 MR. ACKERMAN: I'm sorry, Mr. Rothstein. Thank 9 you. Where an expletive deleted was used and claims 10 privilege on the other conversation. 11 So then we have 01685. I'm sorry, I skipped one. Do 12 you have the -- there is one from Cara Holmes, who is an ex 13 FBI agent that is saying to Mr. Edwards, let's go -- I 14 don't have it right in front of me because but you have it 15 right there. 16 THE COURT: I think our best bet is to go after 17 the close friends. 18 MR. ACKERMAN: Go after his friends. Which we 19 contend supports our abuse of process claim. 20 Then we go to 01685, which is Mr. Edwards to 21 Mr. Fiston, one of the investigators of Mr. Jenny, who he, 22 in his deposition, denies having this type of conduct with, 23 and talks about audio monitoring and recording in the law 24 firm. And that someone talking on the speaker phone can be 25 recording that. Now, we've alleged in the complaint that</p>

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<p>1 Mr. Rothstein represented to these investors that he had 2 high-tech electronic surveillance equipment in order to 3 make this Ponzi scheme go.</p> <p>4 With regard to this motion specifically, 05112, 5 Mr. Edwards is directing an e-mail to two investigators, 6 Mr. Jenny and Mr. Fiston and Mr. Roberts, is a third 7 investigator, and Cara Holmes, the lawyer we just 8 mentioned, speaking to the U.S. Attorney. She said if we 9 have proof of him being out of Florida, they will be in 10 violation of the agreement and she will prosecute him. Her 11 and the state attorney both called on probation. This is 12 why we want to get these records because we believe that 13 they were purposefully going out of their way in an effort 14 to revoke his probation and this was subsequently a portion 15 of something that was litigated before the federal court 16 and found not to be accurate.</p> <p>17 05113 talks about serving Alan Dershowitz, which we 18 discussed earlier.</p> <p>19 01406 is talking about taking Mr. Trump's deposition. 20 And we can put those matters into the complaint, as you 21 talked about earlier.</p> <p>22 01212 is the proposed subpoena for Dershowitz. And 23 Alan Dershowitz was one of Mr. Epstein's criminal lawyers 24 in the criminal complaint, criminal cases, and they're 25 subpoenaing him for deposition in this case.</p>	<p>1 Epstein case. And this is occurring within the same day 2 that these people are meeting to discuss the case.</p> <p>3 If you flip over to 26335, Mr. Rothstein is sending 4 the e-mail to A.J. Discala, Clockwork, an investor, Dean 5 Kretschmer, who I mentioned, and Frank Priam and at the 6 last sentence he states my client clearly feels I have lied 7 to her about her funding. She is one step away from going 8 to another lawyer and the Florida Bar.</p> <p>9 The next one 02992, we have another meeting going to 10 all of these people in the law firm. Okay.</p> <p>11 And then 27013 we have the documents of the Epstein 12 case that were in Mr. Rothstein's office.</p> <p>13 So we have, contrary to what Mr. Edwards has testified 14 in the deposition, these documents establish that 15 Mr. Rothstein conducted the Ponzi scheme with investors for 16 the Epstein cases and unlike Mr. Edwards' testimony, 17 there's numerous meetings --</p> <p>18 MR. SCAROLA: I'm sorry to interrupt, Your Honor, 19 but Mr. Edwards has never ever denied that Mr. Rothstein 20 was engaged in a Ponzi scheme. And to tell this Court that 21 he has testified in his deposition that that didn't occur, 22 that's just false. I don't know what this is all about but 23 what we're supposed to be talking about is whether the 24 documents that were subpoenaed with regard to the federal 25 government have anything to do with the pending</p>
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<p>1 Now, 26477 is a memo from Ken Jenny to Scott Rothstein 2 advising him that the lawyers and investigators working on 3 the Epstein matter are meeting on the twelfth floor at two 4 p.m. to discuss where we are in the investigation. And 5 this is crucial for a number of reasons because it provides 6 one of the links, we believe, between Mr. Rothstein and Mr. 7 Edwards through these investigators where Mr. Scott 8 Rothstein is going to these meetings, learning what is 9 going on and this is the same time period where he is 10 pumping up his cases, these Epstein cases to these 11 investors, which we'll show in subsequent e-mails.</p> <p>12 Okay. Now, we begin the e-mails that Rothstein, 13 Mr. Rothstein is sending to the various investors. 14 A. J. Discala is one of the investors. And then if you go 15 to 27303, Mr. Rothstein is sending out to Frank Priam who I 16 believe is one of the investigators, we have no money in 17 for this client. She left screaming. This is really bad. 18 We can lose the entire plaintiff's group, which we believe 19 related to Mr. Epstein's cases.</p> <p>20 If you look at 04996, again we have another meeting 21 for Mr. Edwards to the number of people that were involved 22 to discuss this matter on October 22nd, 2009.</p> <p>23 Mr. Rothstein in 26817 says I cannot have this blow-up 24 in my face. These clients talk to each other. If I burn 25 this client, I can end up losing all my clients in the</p>	<p>1 counterclaim and I haven't heard a word about that.</p> <p>2 MR. ACKERMAN: Your Honor, I have --</p> <p>3 THE COURT: Let's do kind of focus in on the 4 issue here.</p> <p>5 MR. ACKERMAN: I will. The point of this was to 6 establish the parameter from which we made the request to 7 show the relevancy of it. The point I'm trying to make 8 with Mr. Edwards is that he testified there was a limited 9 number of people involved in the prosecution of this case 10 against Mr. Epstein when these documents clearly show that 11 that's not the case. So we have requested, because we 12 believe at the time they get the non-prosecution agreement 13 that deal is over with, there is no basis at all to assert 14 a joint privilege claim. Instead what it appears to be is 15 that they are looking to try and interfere with the 16 non-prosecution agreement. And so, we, because that part 17 of our theory of our case, if you go to the subpoena, 18 Exhibit 1, we have listed all e-mail communications between 19 the attorney and employee of this Rothstein firm, which 20 list these people, which we believe were involved with it 21 and we specifically list the U.S. Attorney, the State 22 Attorney, the Federal Bureau of Investigation, the Palm 23 Beach Police Department and any investigator working for 24 the state of Florida and anyone that represented an 25 individual with a claim. Now, if you go to --</p>

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<p>1 THE COURT: Wait a minute. Where is the --</p> <p>2 MR. ACKERMAN: If you go to my response.</p> <p>3 THE COURT: I'm looking at your response. Okay.</p> <p>4 MR. ACKERMAN: Okay. Under the one.</p> <p>5 THE COURT: I got it. One.</p> <p>6 MR. ACKERMAN: Next page Schedule A is the --</p> <p>7 MR. KNIGHT: Let the judge catch up with you.</p> <p>8 MR. ACKERMAN: I'm sorry. Schedule A has the</p> <p>9 documents subpoenaed.</p> <p>10 THE COURT: Okay. Go ahead.</p> <p>11 MR. ACKERMAN: If you go to Exhibit 2 in response</p> <p>12 to an e-mail from Mr. Litman, who is the attorney for the</p> <p>13 bankruptcy trustee, we gave him the specific names for a</p> <p>14 specific search for this subpoena. As you can see, there</p> <p>15 are lawyers in the U.S. Attorney's office. There are</p> <p>16 people in the Palm Beach Police Department. There are</p> <p>17 people in the FBI. And there are people in the State</p> <p>18 Attorney's Office. If you go to Exhibit 3, this is</p> <p>19 Mr. Litman's response. He talks about refined e-mail</p> <p>20 search, which sought documents reflecting the</p> <p>21 communications between RRA lawyers and government</p> <p>22 officials, which, if not all, are law enforcement officers.</p> <p>23 He has a disc of those documents that are responsive and</p> <p>24 that are Bates stamped.</p> <p>25 THE COURT: Where is that?</p>	<p>1 they're doing is contrary to their interest and get it</p> <p>2 revoked, you think that is an abuse of process?</p> <p>3 MR. ACKERMAN: When the agreement has already</p> <p>4 been made. Okay. Your Honor, and this is, this was an</p> <p>5 agreement that was reached. Okay. And they're attempting</p> <p>6 to undermine the agreement.</p> <p>7 THE COURT: I'm having trouble here. You're</p> <p>8 telling me or you're suggesting that a victim cannot go to</p> <p>9 the government, even after a reached agreement and say, you</p> <p>10 know, this is bad. I didn't have the input put into it or</p> <p>11 whatever the reason they think it shouldn't be existing, I</p> <p>12 mean, isn't that --</p> <p>13 MR. ACKERMAN: Your Honor, first of all --</p> <p>14 THE COURT: You think that's an abuse of process?</p> <p>15 MR. ACKERMAN: We're not talking the victims.</p> <p>16 We're talking about RRA doing this. And not only that, we</p> <p>17 won't know until we get them to see whether they're related</p> <p>18 to the victim or related to this case. You don't have to</p> <p>19 do an in camera review. We can look at the documents and</p> <p>20 determine whether they relate to a victim. They're still</p> <p>21 not privileged. They're going to third-parties. We don't</p> <p>22 have a privilege issue here. If he is advocating a case on</p> <p>23 behalf of his victims, there is no privilege. He's</p> <p>24 potentially in an adversary situation and there is a</p> <p>25 present adversary proceeding involving this crime, which I</p>
<p>Page 127</p> <p>1 MR. ACKERMAN: That's Exhibit 3 to my response.</p> <p>2 THE COURT: Okay. Go ahead. Really, focus in on</p> <p>3 the issue as to relevance, at this point and time.</p> <p>4 MR. ACKERMAN: The relevance is, Your Honor,</p> <p>5 first of all, we believe that part of this Ponzi scheme was</p> <p>6 designed to do things to Mr. Epstein so that Mr. Rothstein</p> <p>7 could tout those things to these investors to increase the</p> <p>8 amount of money that they were investing. In our amended</p> <p>9 complaint we went through the things that he told the</p> <p>10 investors. That they had the eavesdropping equipment --</p> <p>11 THE COURT: This is, this is the government.</p> <p>12 This is the government, not the investors. It's not</p> <p>13 communications with the investors. What are you, you</p> <p>14 looking for any communications between U.S. Attorneys,</p> <p>15 police and these people? How -- I mean.</p> <p>16 MR. ACKERMAN: Because we believe there was an</p> <p>17 effort to torpedo this non-prosecution agreement. We</p> <p>18 believe that they were taking steps to cause a breach or</p> <p>19 get the government to revoke it after Mr. Epstein had</p> <p>20 agreed to it. We believe that that is an abuse of process.</p> <p>21 Subpoenas in those civil cases --</p> <p>22 THE COURT: Let me get this straight. Are you</p> <p>23 saying that an alleged victim of a crime has no right to be</p> <p>24 involved in or to petition the government or even to</p> <p>25 suggest to the state attorney or anybody else that what</p>	<p>Page 129</p> <p>1 have placed in this complaint. But if he is advocating</p> <p>2 that, then there is no privilege and we should be able to</p> <p>3 look at those documents to see if, in fact, that's what</p> <p>4 they were doing or they were using it based on what I've</p> <p>5 given you to show that they were really trying to, to</p> <p>6 effectuate this Ponzi scheme.</p> <p>7 THE COURT: These are relevant to show what</p> <p>8 again? I'm really -- I'm sorry, I'm dense but --</p> <p>9 MR. ACKERMAN: Your Honor, we believe that</p> <p>10 Mr. Rothstein, and we believe Mr. Edwards participated in</p> <p>11 this, undertook a number of things in the Epstein lawsuits</p> <p>12 that would assist them with the marketing of this</p> <p>13 investment.</p> <p>14 One of the things we believe they did was to proceed</p> <p>15 to interfere -- to proceed to destroy this non-prosecution</p> <p>16 agreement that had already been reached between the</p> <p>17 government and between Mr. Epstein. We believe that they</p> <p>18 undertook surveillance, for example, in order to effectuate</p> <p>19 that. We believe that had nothing to do with these cases</p> <p>20 that they were prosecuting against Mr. Epstein on these</p> <p>21 three people. We believe it was a concerted effort to</p> <p>22 attempt to have Mr. Epstein's probation violated. And if</p> <p>23 you look at the privilege log, there is a designation</p> <p>24 between Paul Kassel and Mr. Edwards relating to violating</p> <p>25 his probation.</p>

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<p>1 THE COURT: Is there already a privilege log 2 regarding these? There is not, right.</p> <p>3 MR. ACKERMAN: There is a privilege log that just 4 describes the subject matter of that communication. It 5 does not relate to this document because the privilege log 6 was not prepared with the documents we're talking about.</p> <p>7 THE COURT: Okay. So we don't have a privilege 8 log?</p> <p>9 MR. ACKERMAN: Not related to these.</p> <p>10 THE COURT: Okay. I understand. Yes, sir.</p> <p>11 MR. SCAROLA: It is extremely frustrating to have 12 counsel repeatedly talk about what he believes when his 13 beliefs are neither relevant, nor, based upon facts and, 14 indeed, are directly contrary to the facts.</p> <p>15 The crime victims right act complaint filed by 16 Mr. Edwards was filed by Mr. Edwards before Mr. Edwards 17 ever had any association whatsoever with RRA and before he 18 ever filed any civil action on behalf of his clients 19 because his client victims were upset about the sweetheart 20 deal that Mr. Epstein had gotten, he had every right, he, 21 Mr. Edwards, had every right and, indeed, a responsibility 22 to his clients to vigorously petition the government for 23 the redress of what they perceived to be a serious 24 grievance.</p> <p>25 To compound all of this, there is no complaint that is</p>	<p>1 documents I'm trying to give the Court where our inferences 2 can be that can lead to discoverable information, okay.</p> <p>3 And I think for the Court to postpone this until we have an 4 amended complaint when we have this information in front of 5 us, which we believe shows a link to a set of patterns 6 where they are talking about the non-prosecution agreement, 7 where they're going after his friends, where there are 8 numerous meetings with the whole firm at the time this 9 investment is being made, that that shows a plan and why 10 this is relevant. And if the victims are adverse to the 11 government, then they don't have a joint privilege. And I 12 submit to you that these are relevant for what our ultimate 13 theory of the case is going to be, which you can see, and 14 what these documents that we have right here demonstrate.</p> <p>15 THE COURT: Okay. What is the next one? All of 16 these orders will be out by Friday, gentlemen, because I'm 17 going -- actually be out by tomorrow. So go ahead, what is 18 the next one?</p> <p>19 MR. ACKERMAN: Okay. Your Honor, I would like, 20 this one, Three D involves an amended supplemental motion 21 based on, and to be able to compel Mr. Edwards to answer 22 questions at a deposition. One of the things, since we 23 have a number of issues relating to privilege, that there's 24 one thing that I would like to address in this deposition 25 because it deals with a request to produce on another</p>
<p>Page 131</p> <p>1 presently pending. And when counsel repeatedly talks about 2 interference with the non-prosecution agreement is part of 3 the theory of our case, there is no case right now. They 4 haven't stated a claim. And the only claim they attempted 5 to state was an abuse of process claim, which has got 6 nothing to do with tortious interference with a 7 non-prosecution agreement.</p> <p>8 They, when repeatedly given an opportunity to relate 9 this requested discovery to an effort to obtain evidence 10 reasonably calculated to relate to the pending 11 counterclaim, are unable to do it because it can't be done.</p> <p>12 Your Honor, respectfully, should grant our motion for 13 a protective order. And if after they have decided what it 14 is they want to try to sue Mr. Edwards for, they have 15 restated another claim and they believe that evidence in 16 the hands of the trustee with regard to communications 17 between RRA attorneys and government officials and law 18 enforcement officers is relevant and material to whatever 19 new fabricated claim they attempt to state, we can come 20 back before Your Honor and address it in that context.</p> <p>21 Thank you, sir.</p> <p>22 MR. ACKERMAN: Your Honor, may I give a brief 23 response?</p> <p>24 THE COURT: Briefly, yes, sir.</p> <p>25 MR. ACKERMAN: Again, when I went through these</p>	<p>Page 133</p> <p>1 motion that relates to damages, okay. If the Court can 2 turn to Three C, Three D. And I'm trying to save 3 some time.</p> <p>4 MR. SCAROLA: May I make a suggestion to save 5 some time? Mr. Edwards has been deposed extensively 6 already. If there is any, any circumstance under which 7 he's going to be deposed again, it, certainly, ought to 8 come after he knows what the charges are against him and 9 not before.</p> <p>10 MR. ACKERMAN: With one exception, and the reason 11 I'm asking now are the damages in their counterclaim. Okay. 12 The damages in their counterclaim, he was asked 13 extensively --</p> <p>14 THE COURT: What are you asking me to do? Are 15 you asking me to redepose him on this one question?</p> <p>16 MR. ACKERMAN: I'm willing to defer the 17 deposition on this one issue to a time where it makes sense 18 to address other issues. But I don't want this objection 19 that he's made in the deposition to keep me, keep us from 20 getting the information for his damages in the 21 counterclaim, which we have not received and is a subject 22 for another motion. They raised objections as to how much 23 you were making. We asked him -- let me back up. If you 24 go --</p> <p>25 THE COURT: If this is a production request, that</p>

<p style="text-align: right;">Page 134</p> <p>1 is the request what we're dealing with. I mean, seems 2 nonsensical for me to decide questions in the deposition at 3 this point until we know exactly who is suing who for what 4 and then you can get them altogether at one time.</p> <p>5 MR. ACKERMAN: I can. The only reason I'm 6 bringing it up is in the deposition we attempted to make an 7 inquiry on financial parts that we believed were relevant 8 to defending the counterclaim and he raised an objection of 9 economic privacy. That is also raised in our request to 10 produce.</p> <p>11 THE COURT: You can still do a request to 12 produce, if that's what you want to do. I don't think we 13 deal with it at the deposition stage.</p> <p>14 MR. ACKERMAN: So just defer this motion?</p> <p>15 THE COURT: I'm not going to, seems silly to me 16 to order, unless you want him to, just to answer it by, if 17 I grant it, answer it by way of interrogatory. I don't 18 think you are going to like that.</p> <p>19 MR. ACKERMAN: Well, at some point we need to 20 redepose him on the damages.</p> <p>21 THE COURT: My point being is if you're not going 22 to accept an answer by way of interrogatories, then you're 23 going to have to redepose him anyway. We're not going to 24 do this today. Not that. It don't make any sense.</p> <p>25 MR. ACKERMAN: Okay. We'll defer and go to the</p>	<p style="text-align: right;">Page 136</p> <p>1 We wanted the agreements between Mr. Edwards, RRA, and 2 Rothstein.</p> <p>3 THE COURT: It does ask for investor. 4 MR. ACKERMAN: Pardon me? 5 THE COURT: It says or investor. 6 MR. ACKERMAN: Okay.</p> <p>7 THE COURT: And/or any other attorney or investor 8 related to any aspect of any plaintiff's case. Not just -- 9 MR. ACKERMAN: Right. So he says that he doesn't 10 have the investor ones but he hasn't produced the ones 11 between Edwards, RRA and Scott Rothstein.</p> <p>12 THE COURT: Okay.</p> <p>13 MR. ACKERMAN: Number nine, we ask for cost of 14 payment that the Rothstein firm had against Mr. Edwards. 15 There's no privilege claim there. Pardon? 16 MR. KNIGHT: Against Mr. Epstein. 17 MR. ACKERMAN: Against Mr. Epstein. I'm sorry, 18 Your Honor. Okay. We felt that that was related to how 19 the cases were being used. We believe that this Ponzi 20 scheme was designed to raise money to fund these cases. 21 Number ten, we ask for the documents received by you 22 relating to the assertion of a lien by the trustee. Okay. 23 Because that relates to his compensation on the Epstein 24 cases, which is part of the damages of his counterclaim. 25 Because in order to find out what he's been damaged, we</p>
<p style="text-align: right;">Page 135</p> <p>1 request to produce.</p> <p>2 THE COURT: Which one is that? 3 MR. ACKERMAN: Okay. Four A. That also 4 involves another issue. To simplify things at this 5 point -- 6 THE COURT: Four. 7 MR. ACKERMAN: We sent a request to produce. 8 It's attached to the motion Exhibit 1. 9 THE COURT: Again, you're dealing with privilege 10 issues here, as well as other stuff, right? 11 MR. ACKERMAN: Well, there are a number of 12 objections here that don't raise privilege. Okay. We 13 asked for, I believe, if you go to Paragraph Five of the 14 motion refers to Paragraph Six of the request where we 15 requested fee sharing agreements relating to the case. He 16 has a counterclaim that seeks damages for, among other 17 things, his reputation, interference with professional 18 relationship, loss of value of time, required to be 19 diverted from his professional responsibilities. So we 20 believe the compensation relationship between Mr. Edwards 21 and RRA and anything related to the Epstein cases should 22 been produced. His objection to this number six says 23 relevance, not reasonably calculated to lead to 24 discoverable information, and there are no agreements with 25 investors. But we were not asking for investor agreements.</p>	<p style="text-align: right;">Page 137</p> <p>1 need to know what he was making at the firm at the time and 2 how the compensation formula was set up and what he earned 3 on the various cases. 4 Number 22 is all documents that support your claim for 5 damages. Okay. There is an objection to that that it's 6 not determined. They can't formulate. He says they don't 7 know what the damages are. Okay. So we need to get that 8 information. 9 THE COURT: Okay. Yes, sir. 10 MR. SCAROLA: Not yet determined is not an 11 objection, it is an answer. The only argument that was 12 made that relates to relevance to the pending counterclaim 13 is evidence with regard to damages claimed by Mr. Edwards. 14 Mr. Edwards is not claiming that he lost any income from 15 RRA. RRA has folded. It went into bankruptcy. It folded 16 and went into bankruptcy as a consequence of 17 Mr. Rothstein's criminal activity. We do not blame 18 Mr. Epstein for the destruction of the law firm and any 19 economic loss that resulted as a consequence of the 20 destruction of the law firm to Mr. Edwards. Therefore, 21 that line of inquiry is irrelevant and immaterial. 22 What we have alleged is that Mr. Edwards has been, and 23 continues to be, diverted from other income producing 24 activity as a consequence of the prosecution of these 25 spurious claims, whatever they may ultimately wind up</p>

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1 being, but what they have been up until now, as well,
 2 including the need to defend against Florida RICCO claims
 3 that no longer exist, and civil remedies for criminal
 4 activity claims that no longer exist against him, that his
 5 attention was diverted from other income producing
 6 activities as a consequence of the need to defend against
 7 this case. That's got nothing to do with how much money he
 8 made historically, if anything, from RRA.

9 MR. ACKERMAN: Your Honor.

10 THE COURT: What about the idea that past
 11 performance is a predictor of future performance in terms
 12 of --

13 MR. SCAROLA: We're talking about the lost value
 14 of the time, that's what we're talking about.

15 THE COURT: I understand that. But how do we
 16 measure his time?

17 MR. SCAROLA: Because he's got a standard hourly
 18 rate.

19 THE COURT: Okay. But, I mean, it's like
 20 somebody saying, well, I can no longer detail cars and I
 21 make X amount of dollars detailing cars but you've been
 22 doing that work for twenty years, can't you find out what
 23 you did before.

24 MR. SCAROLA: Well, I don't think that's an
 25 accurate analogy. In the case of an attorney, as I think

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1 it was Abraham Lincoln observed, what we have to sell is
 2 our time. And there is only a finite amount of that time.
 3 Regardless of what Brad Edwards may have made from other
 4 sources historically or prospectively what he may make in
 5 the future, he lost time that could have been devoted to
 6 other income producing activity. What probative value does
 7 it have to know, for example, that in 2010 Brad Edwards
 8 made \$5,000 and in 2011 Brad Edwards made \$20,000, if Brad
 9 Edwards could have made \$25,000 in 2011, if he wasn't
 10 obliged in 2011 to be sitting in this courtroom all day
 11 today as a consequence of having been sued for purposes of
 12 putting him in this courtroom instead of enabling him to
 13 make a living.

14 So I don't know how you draw any reasonable inference
 15 from that other information. Would it be relevant to know
 16 what his standard hourly rate is, yes. Would it be
 17 relevant to know how much time he has had to devote to this
 18 case, those would be relevant and material inquiries. But
 19 how much he made from other sources is so dependant upon
 20 factors that are entirely independant of the damages
 21 claimed in this case, that they have no relevance and
 22 materiality. And, certainly, in conducting a balancing
 23 test, when they don't have probative value and we weigh
 24 against the absence of probative value the invasion into
 25 his economic privacy, I suggest to Your Honor that the

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1 outcome of that balancing test ought to be, I'm sorry, you
 2 don't get it at this point. There just isn't enough here
 3 for you to get it on the basis that he has told you that
 4 what he has lost is his time and the value of his time.

5 MR. ACKERMAN: May I respond?

6 THE COURT: Yes, sir, just one second. But if he
 7 couldn't sell his time before, I mean, like you say, I just
 8 keep getting back to the fact that if his time was not
 9 productive or he couldn't sell his time before, I don't
 10 know what he made with this law firm. It may have been a
 11 lot of money, it may have been nothing. I don't know. How
 12 could we say that's not, at least, calculated to lead to
 13 admissible evidence in this case as compared to what the
 14 potential value may be.

15 MR. SCAROLA: That, Your Honor, would be a
 16 relevant question. His ability to productively use his
 17 time in the past would be relevant. But Brad is primarily
 18 a plaintiff's lawyer. That's principally the work that he
 19 does and has been doing. Your Honor knows that this year's
 20 productivity is a consequence, or potentially a
 21 consequence, of effort that was made and begun five years
 22 earlier.

23 THE COURT: Let me suggest to you, I've had cases
 24 where the plaintiff in a personal injury case was a
 25 practicing attorney. And they claim as a result of the

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1 injuries sustained in the accident they're unable to work
 2 like they were and, therefore, have lost earnings or
 3 ability to earn money in the future as a result of the
 4 physical limitations, injury or whatever it is. I can't
 5 imagine in that kind of case the attorney could come and
 6 say, well, you can't find out what I made before this
 7 injury because that's not relevant to what my time is worth
 8 today.

9 MR. SCAROLA: I absolutely agree with you. In
 10 that kind of case, I think that, I think it is a relevant
 11 and material inquiry. But let's assume those same set of
 12 circumstances and the attorney says I was, as a consequence
 13 of my injury -- I'm a lawyer who works on an hourly basis
 14 and as a consequence of my injury I missed two weeks of
 15 work. Or I work on a salary and I missed two weeks of work
 16 and this is how much I get paid and I didn't get paid for
 17 that two week period of time. All you get --

18 MR. ACKERMAN: Your Honor.

19 THE COURT: Wait a minute.

20 MR. SCAROLA: All you get in terms of discovery
 21 is what you need to know for what the value of that time
 22 was. That's all you get. And you don't get to know what
 23 he was making five years earlier at a different law firm or
 24 what he may be making today because that's not relevant to
 25 the loss that he had during that limited period of time.

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<p>1 And that's what we're saying, what Brad Edwards has lost is 2 the value of that time that has to have been devoted to 3 this case as a consequence of his having been the victim of 4 an abusive process.</p> <p>5 MR. ACKERMAN: Your Honor, I've attached the 6 interrogatory answers. We've asked him what the amount of 7 the damages alleged to be, it's in excess of one million. 8 They have said emotional distress, mental anguish, which 9 I'm not sure is a claim that can be brought. But he's 10 asked for loss of reputation and standing in the community. 11 Loss of value of time spent in defense and in responding to 12 this process. In the counterclaim he talks about damages 13 to his reputation, interference with professional 14 relationships, loss of a value of time. We can't begin to 15 make that evaluation for the amount of money that's claimed 16 without being able to look into what relationships he had, 17 what fee agreements he had, what money he made so that we 18 can determine whether, in fact, he has been damaged by this 19 or by something else that's happened in his life. And one 20 of the ways we can do it is by looking at what his 21 compensation plan was. What agreements he had with the 22 firm. What he had with referral lawyers so we can 23 establish whether there has been, in fact, an interference 24 with these professional relationships and find some way to 25 get to this million dollars which they are claiming and</p>	<p>1 to the deposition of the plaintiff and a motion to compel 2 relating to the plaintiff. And then we have some 3 objections to request to produce that each has lodged 4 against the others.</p> <p>5 MR. SCAROLA: We don't want to redepose 6 Mr. Epstein until after the new complaint is filed. That 7 can be deferred.</p> <p>8 THE COURT: Okay. So which motion you want to 9 hear next?</p> <p>10 MR. ACKERMAN: Hold on a second.</p> <p>11 THE COURT: You all figure it out and I'll be 12 back in a few minutes.</p> <p>13 MR. SCAROLA: Thank you, sir.</p> <p>14 (BREAK TAKEN)</p> <p>15 THE COURT: Thank you. I wasn't back there 16 twiddling my thumbs. Unfortunately -- not unfortunately. 17 Fortunately, I'm going on vacation Friday to see my 18 grandchildren. And needless to say it always happens, 19 there is all of these emergency motions that are filed that 20 have to be ruled on by Friday so I was dealing with one of 21 our laws clerks on issues I've never heard before in my 22 thirty-five years practicing law.</p> <p>23 MR. SCAROLA: Law clerk?</p> <p>24 THE COURT: We have law clerks. We have to share 25 the law clerks but we have law clerks. Okay. Which one we</p>
<p>1 that we now have to defend. So it is relevant and likely 2 to lead to relevant information.</p> <p>3 THE COURT: Okay. What about the -- I don't know 4 if you mentioned this, Mr. Scarola, the documents 5 evidencing cost and payments of bills and the trustee lien 6 for attorney's fees and costs?</p> <p>7 MR. SCAROLA: Couldn't have any relevancy at all 8 to the pending counterclaim and there is no pending claim.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. ACKERMAN: Your Honor, that goes to, what, 11 ultimately, there is going to be a number of factors that 12 make up what Edwards' salary was and what he made and where 13 it came from. Okay. And if he didn't actually net money 14 from the cases but it had to go to the trustee, that may 15 affect the calculation and the number. And what we're 16 trying to do is make a determination as to the overall 17 impact on his ability to earn money and anything that 18 relates to what the fee is, what the costs were, or 19 affected his income and his relationships is relevant.</p> <p>20 THE COURT: Okay. What is next? I'll tell you 21 what, I'm going to have to take a short break. You can 22 stretch your legs, as well. Tell me which one is the next 23 one.</p> <p>24 MR. ACKERMAN: Hold on a second, Your Honor. I 25 guess the next one would be the protective order relating</p>	<p>1 doing now?</p> <p>2 MR. SCAROLA: Three G.</p> <p>3 THE COURT: Three G. Okay.</p> <p>4 MR. ACKERMAN: It's really in relation to Three G 5 and H.</p> <p>6 THE COURT: Okay.</p> <p>7 MR. ACKERMAN: Okay. If I could also ask the 8 Court to flip over to J. Just keep your finger there. We 9 filed -- basically, what had occurred, is that Mr. Scarola 10 re-noticed Mr. Epstein for deposition, for video deposition 11 on April 13 of this past year. Now, I communicated with 12 Mr. Scarola to find out what the nature of the deposition 13 was going to be about since he had testified extensively 14 already in deposition. Mr. Scarola's response was that he 15 was going to go into inquiry relating to public statements 16 made by the plaintiff regarding his criminal activity, any 17 documents supporting -- he was going to take the position 18 that the plaintiff had waived his Fifth Amendment right. 19 He had taken the position that he had lost his Fifth 20 Amendment rights by operation of law and that was the basis 21 of the deposition. So I sent a request to produce out, 22 which is in J, based on that and received objections to all 23 of those matters. So we filed a motion for protective 24 order based on the grounds that he had already been 25 deposed. That no meaningful grounds had been alleged to</p>

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1 justify taking another deposition. Particularly, on the
 2 grounds that he had waived his Fifth Amendment and we had
 3 sought the discovery to find, understand the basis of that
 4 so we could understand why we were being, my client was
 5 being deposed again. And we had also requested in this
 6 motion that it not be a video deposition. And the reason
 7 why we were requesting that it not be a video deposition is
 8 particularly meaningful in light of the discovery request
 9 that this Court is about to rule on where he may be asked
 10 several questions of a specific sexual nature that then are
 11 placed on videotape on and then goes into the public domain
 12 and the prejudice to that is incredible and should not be
 13 allowed. So we filed this motion. We advised counsel that
 14 unless, we had to have a hearing on this, and that before
 15 he could be redeposed on this new information we needed a
 16 hearing. So we advised him in advance. Mr. Epstein, we
 17 also, I think, had a problem with a date but he did not
 18 appear for the deposition so Mr. Scarola has filed a motion
 19 to compel and for sanctions not to appear.

20 And so our position, basically, is that the grounds
 21 that he sought to depose him on that we were advised was
 22 not appropriate. And that we did not, particularly, we had
 23 a good faith concern, in light of the discovery that he was
 24 attempting to take, of the vast information into prior
 25 sexual issues, that those become, be placed on a video

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1 deposition and then become something in the public domain.

2 THE COURT: Are you asking me to prohibit the
 3 deposition, prohibit the video deposition or prohibit or
 4 require him to produce the documents? I'm not sure. Or
 5 all of the above?

6 MR. ACKERMAN: If he's going to depose him on the
 7 Fifth Amendment, I want the documents that allege that that
 8 was, that that was done. I think that's a reasonable
 9 request. It's a subject that he's claimed numerous times
 10 that that has occurred. And before any deposition occurs
 11 on that we want the documents that establish that.

12 Secondly, we felt that he should not be deposed on
 13 that, on that issue because all it would do -- I mean, he
 14 had already been extensively deposed. And he, Mr. Scarola,
 15 needs to come in and establish why he wanted to take his
 16 deposition again and that's not in his motion to compel for
 17 sanctions. And that needs to be presented to the Court and
 18 approved before any sanctions or order compelling is set
 19 forth.

20 And third, I can't, the rules allow a video deposition
 21 but the Court can make restrictions on how it's used.
 22 And our concern in this case, as I articulated before, that
 23 if we end up going down this rabbit trail of this, the type
 24 of discovery that they have asked for, the sexual nature,
 25 and then that is on a video deposition and it can then be

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1 placed on the Internet, we need to have a hearing on that
 2 so that the Court can place some restriction on the use of
 3 that so there is no unfair prejudice and we can't do that
 4 at this point in time. So that was the basis of the
 5 motion.

6 THE COURT: Yes, sir.

7 MR. SCAROLA: This was a dually noticed video
 8 deposition. Counsel has acknowledged the fact that there
 9 were communications about the scheduling of this deposition
 10 and what we intended to do. While a motion for protective
 11 order was filed on April 8 of 2011, no effort was ever made
 12 by the plaintiff to set the motion for protective order for
 13 hearing. They just unilaterally chose not to show up.
 14 There's a certificate of non-appearance. We had a court
 15 reporter present we were there. We were ready to proceed
 16 and they simply did not appear.

17 Mr. Epstein has made numerous public statements to
 18 reporters. And his denials about having engaged in
 19 misconduct with minors have been reported. I want to ask
 20 him about those public statements that he has made.
 21 I want to know whether the reports of those public
 22 statements are accurate or not accurate. I want to know
 23 what the denials are based upon. I want to know whether he
 24 admits having spoken to these reporters or denies having
 25 spoken to them at all. All for purposes of determining

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1 whether there, in fact, has been a waiver of his Fifth
 2 Amendment right to remain silent. Because he cannot choose
 3 to remain silent when he is deposed but speak to every
 4 court reporter who he can get in front of to tell them this
 5 is all silly because I really didn't do anything wrong.

6 THE COURT: You said court reporter, I don't
 7 think you meant.

8 MR. SCAROLA: I meant reporter, not court
 9 reporter, you are correct, Your Honor. There is,
 10 obviously, significant evidentiary value to having these
 11 depositions recorded on video for purposes of later
 12 presentation before a jury. The Florida Rules of Civil
 13 Procedure recognize that value. And the concerns that
 14 Mr. Ackerman has, if they need to be addressed at all,
 15 certainly, don't need to be addressed by a prohibition of
 16 the videotaping of the deposition, which while he
 17 appears to be backing off from that now, is what his motion
 18 asked for.

19 We are entitled to take a video deposition. As I've
 20 told Your Honor, I don't want to do it until after I know
 21 what the new allegations are in the new complaint. We
 22 didn't have a new complaint as of the time of this request
 23 for deposition but I do now want to delay it until such
 24 time as the video deposition can be taken to cover all of
 25 the issues that are raised in the new complaint.

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<p>1 But I do want to be able to video it when we take the 2 deposition.</p> <p>3 THE COURT: Well, I'm not going to rule on when 4 you have to take the deposition. If I allow it, I'm just 5 going to rule as to whether or not you're allowed to take 6 the deposition --</p> <p>7 MR. ACKERMAN: Your Honor, may I respond?</p> <p>8 THE COURT: -- in the areas we're talking about. 9 Second, whether or not you have to produce the documents 10 you have requested.</p> <p>11 MR. SCAROLA: Let me address that, Your Honor.</p> <p>12 THE COURT: And third, whether or not it can be 13 by video and, if so, what restrictions I put on any video 14 that's done.</p> <p>15 MR. SCAROLA: Had this deposition gone forward, 16 as it should have gone forward on April 13, I obviously 17 would not have been obliged to respond to a request to 18 produce in advance of that deposition. And the selection 19 of particular documents for use during the course of the 20 deposition is attorney work-product. I ought not to have 21 to give this party a script of what he is going to be asked 22 about in advance. I don't think I'm obliged to do that. 23 Obviously, I'm not obliged to absent an order of the court, 24 and if the Court did order me to do it, I would do it. But 25 I don't think that I should have to give them a script of</p>	<p>1 burden, as I understand it, the way the rule reads.</p> <p>2 MR. ACKERMAN: I don't believe that's the case, 3 Your Honor.</p> <p>4 THE COURT: I thought it states it doesn't limit 5 it unless --</p> <p>6 MR. ACKERMAN: But the case law does allow 7 protection --</p> <p>8 THE COURT: True.</p> <p>9 MR. ACKERMAN: -- to a party that's already been 10 deposed.</p> <p>11 THE COURT: I agree.</p> <p>12 MR. ACKERMAN: And that's my point. He's already 13 been extensively deposed.</p> <p>14 THE COURT: But, I guess what I'm saying, maybe 15 I'm saying the same thing by different, different wording.</p> <p>16 MR. SCAROLA: What has repeatedly been referred 17 to as an extensive deposition is a series of Mr. Epstein 18 reciting a script provided to him by counsel about how he 19 is asserting his Fifth Amendment privilege even though he 20 would like to be able to answer my questions, but his 21 lawyer has instructed him not to answer my questions and so 22 I'm not going to answer your questions and it goes on for 23 about three paragraphs.</p> <p>24 MR. ACKERMAN: Your Honor.</p> <p>25 MR. SCAROLA: And it's the same response we got</p>
<p>Page 151</p> <p>1 what I'm going to be asking about in advance and that's, 2 basically, what they're asking for.</p> <p>3 MR. ACKERMAN: Couple of things, Your Honor. 4 This motion was filed at the time you were basically saying 5 I need to have an all day hearing and we're going to defer 6 any ruling on discovery and stuff until you get your hands 7 around this case. And so based on the statements the Court 8 made it was set for today and it would have been set in 9 May, if we had reached it in May, but that's why it wasn't 10 noticed because it was my understanding that you were going 11 to, you needed to understand what the issues were before 12 you could --</p> <p>13 THE COURT: Let's just deal with the subject of 14 aspect not the procedural.</p> <p>15 MR. ACKERMAN: Okay. Secondly, Mr. Scarola 16 hasn't shown why he needs to be deposed again. He hasn't 17 shown why these matters weren't addressed in the previous 18 deposition. Okay. He has already been extensively deposed 19 already and he hasn't met his burden to show that he's 20 entitled to be deposed again on these issues, at least 21 until --</p> <p>22 THE COURT: I understand the rule to be the 23 opposite of what you just said. I understand the rule to 24 not limit the type, scope of discovery unless it's shown 25 that it's oppressive, burdensome. And that becomes your</p>	<p>Page 153</p> <p>1 over and over and over again.</p> <p>2 MR. ACKERMAN: Your Honor.</p> <p>3 MR. SCAROLA: It was not an extensive deposition 4 as to the merits of this case. And I have clearly stated 5 why I need to redepose him because I believe he has now 6 waived his right to Fifth Amendment privilege and I want to 7 explore the basis for making that claim. And in addition 8 to which he will have made new assertions for new 9 affirmative relief at some point between now and thirty 10 days from now and I want to ask him a lot of questions 11 about every claim for affirmative relief he's making.</p> <p>12 MR. ACKERMAN: Your Honor, we keep going back to 13 this. If you look at Mr. Epstein's deposition, when he's 14 asked questions about the abuse, what I'm going to call the 15 abuse of process case, he answers those. What he has taken 16 the Fifth Amendment on are all of these sexual matters, 17 which we have contended have no bearing on this case.</p> <p>18 THE COURT: We're not dealing with that right 19 now. We're dealing with the questions that he wants to ask 20 him with regard to the fact that he may or may not have 21 waived his Fifth Amendment privilege just by making public 22 statements or discussing it with third-parties. That's --</p> <p>23 MR. ACKERMAN: Then I think, then I think he 24 needs to come to this Court and produce the documents to 25 show that that has been waived before we have to undergo a</p>

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<p>1 deposition about it. He had the opportunity to do it. He 2 hasn't shown that he could have or would have been able to 3 do it before. And at this point in time we've made a 4 request for it. And the Court, I believe, in order to 5 properly protect the parties from someone that's already 6 been deposed is to determine whether, in fact, there is a 7 prima facie basis for a waiver, otherwise, we're going to 8 be arguing about it in the deposition.</p> <p>9 THE COURT: See, here's part of the rule I'm 10 talking about. It says unless the Court orders otherwise 11 and under subdivision C, which is protecting you against 12 oppressive, et cetera, et cetera. The frequency and use of 13 these is not limited. I always understood you could take 14 deposition as long as you are not abusing the system or 15 otherwise subject to protective order because you're 16 harassing, whatever the rules says here. I can get you the 17 exact words.</p> <p>18 MR. ACKERMAN: But there is the case law that the 19 Court is aware of where if the party has already been 20 deposed they have to come -- a party seeking to redepose 21 him has to show the basis. Now, he's --</p> <p>22 THE COURT: You got a case that says that?</p> <p>23 MR. ACKERMAN: I don't have it with me, Your 24 Honor. I'm relying on my memory.</p> <p>25 THE COURT: I think that's an overstatement of</p>	<p>1 arguing about here have been produced to a third-party. 2 And I believe that that would then allow us to get the 3 documents that are subject to the privilege and we can use 4 that to prepare our complaint. The Court denies it, we 5 still are on track. But it's very important because they 6 have maintained. We have had six or seven months of 7 litigation over these issues over privilege. You issue a 8 stay to us that we can't go subpoena the trustee and then 9 when they are faced with the choice of having to deal with 10 it in the bankruptcy court they turn over the records that 11 we are under confidentiality agreement with to a 12 third-party without that confidentiality.</p> <p>13 THE COURT: Set your fifteen minute motion and 14 I'll listen to that. But, otherwise, I want the other 15 thing set, as well. Get some time so we can go through 16 this stuff, okay.</p> <p>17 MR. SCAROLA: And that is not, that is not 18 delaying the thirty day period that they have to file their 19 new complaint; is that correct, Your Honor?</p> <p>20 THE COURT: No.</p> <p>21 MR. ACKERMAN: I'm just asking it be done before 22 the thirty days so I have an opportunity to, if you agree 23 with me, to get those documents.</p> <p>24 THE COURT: You will prepare the orders on the 25 motion to dismiss, on the motion for punitive damages, and</p>
<p>Page 155</p> <p>1 what these cases say. I think they say you can protect 2 somebody against burdensome, harassment, oppressive, 3 repetitive discovery. I don't see it says that you can't 4 take more than one deposition. You can take five 5 depositions if you're not going over the line. But, you 6 know, certainly, if you want to give me a case that says 7 that. Okay. Guys, that's going to have to be it because 8 I, unfortunately, have to do a couple of orders back there 9 that I got that man working on. I'll get these orders out 10 by tomorrow for you. And then what I want you to do is 11 contact my JA and I would hope, what I would like to do, 12 and I know you all don't want to do it this way 13 necessarily. I want to get a complaint out there that 14 withstands the motion to dismiss before we go into all 15 these privilege things. I just want to be able to know 16 what the heck we're talking about and what the lawsuit is 17 about. Because some of the things you've alleged in my 18 view in the complaint at present may not fall within the 19 area of abuse of process unless can you show me otherwise.</p> <p>20 MR. ACKERMAN: What I would like to do, Your 21 Honor, because I know the time is late, I would like before 22 our complaint is due, to have a fifteen minute hearing, I 23 don't think it will take longer than that, where I can put 24 to the Court one area where I believe the privilege issue 25 has been waived, and, that is, those documents that we are</p>	<p>Page 157</p> <p>1 on the issue about the pre-trial gag order.</p> <p>2 MR. ACKERMAN: Yes.</p> <p>3 THE COURT: I'll do the rest of these.</p> <p>4 MR. KNIGHT: Enjoy your vacation. Sounds like 5 you need it.</p> <p>6 THE COURT: Well, yeah. Thank you.</p> <p>7 (Court adjourned 4:45 p.m.)</p>

CERTIFICATE

I, Kathleen M. Ames, RPR, Notary Public, State of Florida, was authorized to and did stenographically report the foregoing proceedings; and that the transcript, pages 3 through 157, is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, or employee, or attorney, or counsel of any of the parties' attorney or counsel connected with the action, nor am I financially interested in this action.

Dated this 15th day of July, 2011.

KATHLEEN M. AMES, RPR